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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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Date of decision: 16th September, 2024

Harbans Singh Riar

...Petitioner

Versus

Babu Ram

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ritesh Pandey, Advocate for the petitioner.

Mr. Prateek Mahajan, Advocate for the respondent.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of criminal complaint No. 124 dated 14.09.2009 (Annexure P-1) titled as Babu Ram Vs. Harbans Singh Riar pending before the Court of learned Chief Judicial Magistrate SAS Nagar, Mohali and the order dated 14.09.2011 passed therein, thereby summoning the present petitioner as an accused to face trial under Section 500 of IPC and all the subsequent proceedings having emanated therefrom.

2. Tersely put, the facts in brief are that aforementioned complaint has been filed by the respondent-complainant on the allegations that the petitioner who was posted as SHO at Police Station Mohali had abducted him and illegally confined him in some secret places. When his family members tried to initiate legal proceedings against him by filing a petition



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before this Court, he illegally showed the arrest of the respondent in a case bearing FIR No. 99 dated 03.07.2023 registered under Sections 376(2)(g), 366(A), 364, 344, 323, 225(A), 213, 218, 465, 506, 120-B of IPC and Section 3(1)(11) of Scheduled Castes and the Scheduled Tribes (Prevention of atrocities) Act, 1989 at Police Station Mohali. He was extended benefit of bail in the above said FIR on 05.08.2005 and then to justify the arrest, the petitioner manipulated a statement alleged to have been recorded by one Balkar Singh under Section 161 of Cr.P.C. in the above mentioned FIR to the effect that the respondent had exerted pressure upon him to get a compromise effected therein. The respondent was discharged by the Court of Sessions Judge, Ropar vide order dated 16.09.2006. He came to know that neither the above said Balkar Singh nor any other person had recorded any statement against him and the petitioner had falsely implicated him in the aforementioned FIR by levelling false and frivolous allegations with malice, being fully aware that the same were defamatory against the respondent. While alleging that the petitioner by falsely implicating him in the aforementioned FIR, had maligned and defamed his reputation amongst colleagues and others, he prayed for taking action against the petitioner under Section 500 of IPC.

3. In preliminary evidence, the respondent examined five witnesses. By order dated 14.09.2011, the learned trial Magistrate summoned the petitioner under Section 500 of IPC by observing that *prima facie* sufficient grounds had been made out against him. Aggrieved from the same, the petitioner filed a revision petition bearing No. RT-14-2012 before



the Court of learned Additional Sessions Judge, SAS Nagar (Mohali) which was dismissed vide order dated 19.03.2013.

4. Feeling dissatisfied, the petitioner-accused has filed the present petition.

5. It is argued by learned counsel for the petitioner that the impugned order dated 14.09.2011 as passed by the learned Magistrate is not sustainable in the eyes of law as he did not apply his judicious mind while passing the same. A non-speaking order had been passed in a mechanical manner without adverting to the allegations levelled in the complaint and the evidence led by the respondent. The allegations on the face of the record did not make out any *prima facie* case for commission of offence under Section 500 of IPC. The learned trial Magistrate ignored the fact that the ingredients for commission of offence of defamation as defined under Section 499 of IPC had not been made out from the evidence produced on record.

6. It is further argued that while passing the impugned order dated 14.09.2011, the learned Magistrate and while passing the order dated 19.03.2013, the learned Additional Sessions Judge did not take into consideration the fact that the petitioner was a public servant at the time of the alleged incident and since the respondent had been arrested by him while performing his duty as such, therefore, sanction for his prosecution under Section 197 of the Code of Criminal Procedure was mandatory, which was not so taken. Undue weightage had been given to the evidence adduced by the respondent-complainant. The fact that the petitioner had not acted in personal capacity but was discharging his official duties while arresting the



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respondent in case bearing FIR No. 99 of 2003, had also not been taken into consideration. The respondent had failed to show that the petitioner had any personal grudge against him. There was substantial delay in filing the complaint which had not been explained. With these broad submissions, it is urged that the complaint as well as the impugned orders are liable to be set aside and the petition deserves to be accepted. To buttress his arguments, learned counsel for the petitioner has placed reliance upon the authorities cited as ***Chief Education Officer Vs. K.S. Palanichamy, President, Parents Teachers Associations, Salem, 2012(3) R.C.R (Criminal) 556 and Aroon Purie and others Vs. State of Haryana, 2007(4) R.C.R. (Criminal) 6.***

7. *Per contra*, learned counsel for the respondent has argued that there was sufficient evidence on record to prove that the petitioner had defamed the respondent by effecting his arrest in an illegal manner by manipulating statement of one Balkar Singh who infact had never recorded any such statement implicating the respondent. Due to the act and conduct of the petitioner, not only the reputation of the respondent was harmed in the estimation of others but his character and credit were also lowered down and he was subjected to unnecessary harassment.

8. Learned counsel for the respondent further contends that learned Lower Appellate Court had rightly observed that no weightage could be given to the arguments raised by the petitioner for sanctioning his prosecution under Section 197 of the Code at the stage of issuance of process and no sanction was required before filing of the complaint. He has argued that it was no part of duty of the petitioner to extend threats to the



respondent, to manipulate a tutored statement and then to get him arrested in an illegal manner. It is therefore, argued that the contentions raised by the petitioner are devoid of any force and are liable to be rejected. In support of his argument, learned counsel for the respondent has placed reliance upon the authorities cited as ***Choudhury Parveen Sultana Vs State of West Bengal and Anr., 2009(1) R.C.R (Criminal) 765***, ***“Inspector of Police and Another Vs. Battenapatla Venkata Ratnam and Another”***, ***2015 ALL MR (Cri)2064 “Surinderjit Singh Mand and Anr. Vs. State of Punjab”***, ***2016 (8 SCC 722)***, ***“Balraj Singh Vs. State of Rajasthan and Anr, 2009 (2) R.C.R (Crl.) 551***, ***“K.C. Narwal, SDO Vs. Jagdish Chander, Proprieter, Friends Poultry Farms, VPO Barwala, Panchkula”***, ***2009 (2) R.C.R (Crl.) 103*** and ***“Devinder Singh and Ors. Vs. State of Punjab through CBI”***, ***2016 (12) SCC 87***.

9. The accused has been summoned by the Court of Magistrate to face trial for commission of offence punishable under Section 500 of IPC. Undisputedly, a Magistrate has power to take cognizance of an offence under the provisions of Section 200 of Code of Criminal Procedure in a private complaint and to issue the process when the material produced on record, in his/her opinion, is sufficient to do so. The sustainability of exercise of such power, is to be considered in view of the legal and factual position. The Hon’ble Supreme Court laid down the golden standard for summoning an accused in its decision in ***M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others, (1998) SCC (Criminal) 1400***, wherein it was observed that summoning of an accused in a criminal case is a serious



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matter. Criminal law cannot be set into motion as a matter of ordinary course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and the evidence that would also be sufficient for the complainant to succeed in bringing home the charge as against the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.

10. As per Section 204 of the Code, if in the opinion of the Magistrate taking cognizance of an offence, there are sufficient grounds for proceeding, he shall issue summons for procuring the attendance of the accused in a summons case or in a warrant case. The sine qua non for exercising the power under Section 204 of Cr.P.C. to issue process, is the subjective satisfaction regarding the existence of sufficient ground for proceeding. In '***Mahmoodul Rehman and others Vs. Khazir Mohammad Tunda and others, (2015) 12 SCC 420***', the Hon'ble Supreme Court held

thus:-



“22.....The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court.....In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction..... To be called to appear before criminal court as an accused is serious matter affecting one’s dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”

11. In ***Sunil Bharti Mittal Vs. CBI (2015) 4 SCC***, the Hon’ble Supreme Court interpreted the expression “sufficient ground for proceeding” and held that there should be sufficient incriminating material against the accused concerned before proceeding under Section 204 of Cr.P.C. It was observed as follows:-

“the words ‘sufficient ground for proceeding’ appearing in Section 204 are of immense importance. These words amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to



be stated in the order itself. The order is liable to be set aside, if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would not be bad in law, if the reason given turns out to be ex-facie incorrect.”

12. In view of the position of law as discussed above, with regard to the powers of Magistrate to issue process in private complaint case, it is to be considered at the very outset, as to whether the petition filed by the petitioner seeking quashing of the summoning order is maintainable or not? In this context, reference can be made to '**Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalzi and others (1976) 3 SCC 736**' wherein the Hon'ble Supreme Court laid down certain conditions whereunder a complaint can be quashed invoking the power under Section 482 of the Code, which are as follows:-

- (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same, taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
- (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused
- (3) where the discretion exercised by the Magistrate in issuing



process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and .

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

13. The question as to whether the order passed by the Magistrate of issuing summons, can be interfered with, in exercise of powers under Section 482 of Cr.P.C. had also been considered by Hon'ble Supreme Court in ***Bhushan Kumar and another Vs. State (NCT of Delhi) and another (2012) 5 SCC 424*** and in ***M/s Pepsi Food Ltd's case (supra)*** wherein it was observed that a petition filed under Section 482 of Cr,P,C, for quashing an order summoning the accused is maintainable.

14. Similarly, in a recent judgment dated 22.02.2024 titled as ***'Vikas Chandra Vs. State of Uttar Pradesh and another 2024 INSC 261'***, the Hon'ble Supreme Court reiterated the position that the order of issuance of summons could be interfered with by the High Court in exercise of powers under Section 482 of Cr.P.C.

15. In view of the ratio of law as laid down in the above cited cases, it is clear that if a complaint discloses commission of an offence, the Magistrate is well within his powers to set criminal process into motion and while exercising power under Section 482 of the Code in such an eventuality, the High Court is under a duty to examine whether the allegations made in the complaint or the statements of the witnesses



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recorded in support of the same taken at their face value make out a case or not as against the accused or whether the complaint does not disclose the essential ingredients which is alleged against the accused. However, there is no impediment for the High Court to entertain such a petition.

16. Let us now proceed further to consider as to whether the allegations as set out in the complaint as well as the evidence produced before the Magistrate, make out a case for issuing of process under Section 500 of IPC as against the petitioner or not and as to whether, the impugned order dated 14.09.2011 requires any interference or not?

17. The petitioner has been summoned to face trial on the allegations that he was *prima facie* proved to have defamed the respondent. The offence of defamation is defined under Section 499 of IPC whereas Section 500 provides punishment for the offence. Both these Sections read as under:-

Section 499:-

Defamation.- *Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the case hereinafter expected, to defame that person.*

Explanation 1. XX XX XXX

Explanation 2. XX XX XXX

Explanation 3. XX XX XXX

“Explanation 4:- *No imputation is said to harm a*



person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

500. *Punishment for defamation.--Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.*

18. For invoking provisions of Section 499 of IPC, it is not only essential that the impugned imputation harming the reputation of the person must be alleged to have been made or published but also that it must be shown, amongst others, to have directly or indirectly, *inter alia* lowered the moral or intellectual character of the concerned person ‘in the estimation of others’

19. **V. Mitter (Author)** in his commentary on Law of Defamation & Malicious Prosecution (Twelfth Edition) expounds on the subject with reference to **fourth explanation** as follows :-

“And further since in Explanation 4, appended to the section, it is laid down that no imputation is said to harm a person's reputation unless it lowers him in the estimation of others, it follows that there can be no publication unless it reaches at least a third person, in whose estimation the reputation of the person defamed could possibly suffer.”

(emphasis supplied)

20. In the backdrop of the above, the allegations in the complaint



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and the evidence recorded by the respondent in support thereof has to be considered. The facts disclosing the offence under Section 500 of IPC are contained in para No. 13 to 15 of the complaint (Annexure P-1) which are reproduced as under, for the sake of convenience:-

“13. That after implication in the case and the imputations leveled in the case, the people and colleague of the complainant started to hate, dislike, ridicule, shun and avoid the complainant and stopped to call the complainant in social gatherings and functions and ridicule the complainant and further started to see the complainant with suspicious eyes and started to put so many queries to the complainant.

14. That the accused implicated the complainant in a false and frivolous case and leveled false, wrong and frivolous imputations/allegations with malice, intentionally, willfully, with malafide intention and ulterior purpose, knowingly fully well, the truth, only to harm, tarnish and lower down the reputation and character of the complainant in the estimation of society, colleagues and other peoples.

15. That the accused have greatly and considerably injured and fallen the credit and reputation of the complainant in the estimation of the colleagues and people including Shashi Bala, Harmesh etc. by implicating the complainant in a false and frivolous case and by levelling wrong, false and frivolous allegations/imputations, so the accused has committed an offence under Section 500 IPC.”

21. So far as the evidence produced by the respondent in support of the above mentioned allegations is concerned, as already mentioned, the respondent examined five witnesses. Relevant for the purpose of this case are the statements of CW4- Harmesh Singh, CW-5 Shashi Bala and CW-2



Babu Ram i.e. respondent himself. While appearing as CW-2, the respondent-complainant is shown to have deposed that due to lodging of case bearing FIR No. 99 of 2003 against him, arresting him in the said case and keeping him in custody till 05.08.2005, his reputation was harmed and lowered down in the eyes of members of society. CW-4 Harmesh Singh, Shashi Bala and Sunny Kumar including his other friends had stopped talking to him and calling him in public functions. CW-4 Harmesh Singh deposed that due to registration of FIR against the respondent, his respect was lowered down in the eyes of members of society, his acquaintances had stopped inviting him to functions and he was subjected to embarrassing questions. CW-5 Shashi Bala who is none other than the wife of the respondent, is shown to have deposed that due to lodging of criminal case, the respect of respondent was lowered down in the members of the society and they had stopped talking to him and calling him in their functions.

22. On a careful scrutiny of the statements of the respondent and above named witnesses, it appears that except for the general allegations that the respect of the respondent was lowered down in the society due to his being implicated in a criminal case, there is no substance to establish the criminality of the petitioner. Neither CW-4 nor CW-5 stated that the respect of the respondent had lowered down in their own estimation. They also did not cite the name of any other person in whose estimation, the moral or intellectual character or respect of the respondent was lowered down. The testimony of the complainant himself could not be considered for the purpose of showing that his reputation had been lowered down. On the basis



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of the allegations made by CW-4 and CW-5 in the statements recorded by them, the ingredients for commission of offence defined under Section 499 of IPC cannot be stated to have been satisfied. So far as the allegations made in para No. 13 to 15 of the complaint are concerned, a reading of the same also shows that general allegations as levelled therein were without any substance to establish that the petitioner by arresting the respondent in case bearing FIR No. 99 of 2003 intended to harm, or had reason to believe that such arrest would harm the reputation of the respondent and the implication thereof had directly or indirectly lowered the moral or intellectual character of the respondent in the estimation of others. However, while passing the impugned order, the learned Magistrate is not shown to have considered this aspect. As such, this Court is of the considered opinion that neither the allegations in the complaint nor the evidence produced by the respondent were *prima facie* sufficient to prove that the petitioner intended to defame the respondent by arresting him or had actually defamed him. It is well settled proposition of law that anything which lowers the complainant in his own estimation cannot constitute defamation. While determining a person's reputation, his opinion about himself or his profession is irrelevant as distinguished from that of any other's opinion. The reputation has been used to denote the estimation in which a person is held by others, the character imputed to him in the community or the society to which he belong. The evidence of the witnesses examined by the respondent is lacking on the point that the implication of the respondent in FIR No. 99 lowered down his reputation in the estimation of any other person.

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23. No doubt, it has been revealed from record that the respondent had been arrested by the petitioner who was the investigating officer of case bearing FIR No. 99 of 2003 and was subsequently released on bail and then discharged vide order dated 16.09.2006 by observing that there were no allegations against him in order to constitute any offence punishable under law. However, from the same no conclusion can be drawn that the petitioner intended to defame the respondent by effecting his arrest. Moreso, the defamatory act attributed to the petitioner was allegedly committed by him while he was investigating the case bearing FIR No. 99 of 2003. Being an investigating officer, he was obviously lawfully seized of the investigation of FIR No. 99 and was intimately connected with the discharge of his duties as a police officer. The act of arresting the respondent was done or purported to be done in execution of duty. The question that arises is whether the statutory sanction under Section 197 of Cr.P.C. was required before prosecuting the petitioner and passing of the summoning order against him.

24. The contention raised by learned counsel for the respondent is that the petitioner could not avail of his official position as a cloak for commission of offence of defaming him as it was no part of his duty to commit the same and therefore, he was not entitled to protection under Section 197 of Cr.P.C. The petitioner being a police officer was a public servant. Section 21 of IPC defines Public Servant as a person falling under any of the 12 descriptions given therein. As per the description 12, every person in the service or pay of the Government for the performance of any duty by the Government falls within the definition of public servant. Any



duty assigned to a public servant either under a statute or by an executive order would assume the character of public duty provided the same is not illegal or against public policy. Section 197 is an embargo on the power to take cognizance of an offence allegedly committed by a public servant, who is not removable from his service saved by or with the sanction of the Government, if he is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty.

In *State of Orrisa and others Vs. Ganesh Chandra Gen AIR 2004 (Supreme Court) 2179*, it was observed by Hon'ble Supreme Court that Section 197 has been widened by protection to even those acts or omission which are done with purported exercise of official duty i.e. under the color of the office. Official duty implies and such act or omission must have been performed as part of the duty which must have been official in nature. Once any act or omission has been found to have been committed by the Public Servant in discharge of his duty, then it must be given liberal or wide construction so far as its official nature is concerned. Once, it is established that act or omission was done by the public servant by discharging his duty, then the scope of its being official should be construed so as to advance the object of the Section in favour of the public servant otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated.

25. The facts and circumstances of the present case clearly indicate that the petitioner while discharging his official duty as a police officer and while conducting investigation of the case bearing FIR No. 99, recorded



statement of witness Balkar Singh and on the basis of same, arrested the respondent. Undisputedly, he was later on released and then discharged by observing that no offence had been made out against him. However, the act of the petitioner was protected as done in the exercise of his official duty or purported to be done in exercise thereof by conducting investigation. It cannot be stated that the act complained of was not part of official duty of the petitioner and did not attract the bar under Section 197 of the Code. Rather the offence complained of i.e. arresting the respondent can certainly be said to be part of the duty of the petitioner while investigation the case bearing FIR No. 99 of 2003. With regard to the allegations that the petitioner had illegally confined the respondent, except the bald allegation in the complaint in this regard, no material has been placed on record to prove so. The discharge of the complainant does not mean that while arresting him, the petitioner was not acting or purporting to act in discharge of his duty. Sanction was therefore required. Being in the employment of State Government, the petitioner enjoyed protection of Section 197 of IPC and court could not take cognizance of the offence alleged to have been committed by him except with the previous sanction of the State Government which had not been so taken. The complaint filed under Section 500 of IPC by the respondent- complainant is as such hit by the provisions of law and could not have been entertained by learned Magistrate. Similarly, the order of the Magistrate thereby summoning the petitioner for offence under Section 500 of IPC also suffers from the same infirmity. The Judicial pronouncements as cited by learned counsel for the respondent are not



applicable to the peculiar facts and circumstances of the case and serve no purpose.

26. In view of the discussion as made above, it is observed that the trial Magistrate did not invoke the jurisdiction vested in him in a proper manner while issuing process as against the petitioner for commission of offence punishable under Section 500 of IPC and the jurisdiction so exercised was an abuse of process, warranting intervention by this Court and the learned lower Appellate Court also committed an error in upholding the impugned order of learned trial Court. Therefore, the order passed by learned Magistrate and the order of the learned lower Appellate Court thereby upholding the order of the trial Magistrate are not sustainable. Accordingly, the impugned orders as well as the complaint are quashed and the main petition is allowed.

[MANISHA BATRA]
JUDGE

16th September, 2024
Parveen Sharma

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|-------------------------------|---|----------|
| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |