



2024:DHC:6241



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on : 20.08.2024

+ **CRL.M.C. 2405/2024**

KOMAL KUMARI

..... Petitioner

versus

**THE STATE(NCT OF DELHI)
& ANR.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Krishna Murari Pandey, Adv.

For the Respondents : Mr. Pradeep Gahalot, APP for the State
with Ms. Anuranjan Arya, Adv.
Mr. Prateek Singh Chaudhary, Adv. for R2

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

CRL.M.A. 9224/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 2405/2024 & CRL.M.A. 9225/2024 (for ad-interim ex-parte stay)

3. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeking quashing of orders dated 12.12.2022 and 21.01.2023 (hereafter '**impugned orders**'), passed by



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the learned Metropolitan Magistrate ('MM'), South East District, Saket Courts, New Delhi, in Ct. Case No. 2008/2022.

4. The learned MM, by order dated 12.12.2022, issued summons against the accused persons, including the petitioner with the observation that *prima facie* there was enough material on record that certain defamatory tweets were made by the accused persons against the complainant and his wife.

5. The learned MM, by the order dated 21.01.2023, issued bailable warrant against the petitioner after observing that the summons had been served to the petitioner on her address and she had also been contacted on her mobile number and apprised about the court proceedings. The learned MM also issued non-bailable warrant against the co-accused after observing that she was absent despite service of the bailable warrant.

6. It is the case of the complainant that the petitioner and co-accused Pooja were his employees, who were embezzling funds from his salon, along with other employees by taking payments directly in their accounts from the clients. After Respondent No.2 lodged a case regarding the embezzlement of funds, he alleges that he was threatened by one of his previous employees arrayed as an accused in the case that they will defame him for initiating such action. The complainant promptly informed multiple authorities regarding the threat. Thereafter, as a counter blast, in a series of similarly phrased tweets, the petitioner and the co-accused Pooja alleged that the complainant had sexually exploited him. The accused persons also



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named the petitioner's wife in the said tweets along with her designation as a judicial officer to malign her reputation. Aggrieved by the same, the complainant filed the complaint alleging defamation.

7. The facts of the present case, as made out from the complaint and the statement of Respondent No.2, are as follows:

6.1 It is alleged in the complaint that the petitioner and the co-accused person used to work in the salon of the complainant/ Respondent No.2. It is alleged that the petitioner abruptly quit her job and informed Respondent No.2 that she is returning to her hometown in Bihar. It is alleged that Respondent No.2 found out from his other employees that his employee-Pooja Verma (co-accused) along with some other employees was involved in embezzlement of funds of the salon.

6.2 It is alleged that the co-accused visited the salon for payment of her dues where Respondent No.2 checked her phone and found that she had received the payments directly into her UPI account from several clients.

6.3 It is alleged that Respondent No.2 called the police, wherein the co-accused person during questioning stated that she along with other employees, including the petitioner, used to illegally receive payments from clients directly into their UPI Accounts.

6.4 Respondent No.2 made a complaint, which led to the registration of FIR No. 309/2022 dated 29.08.2022, for the offence under Sections 408/34 of the Indian Penal Code, 1860, against the co-accused in the present case and one Chote Lal Thakur.



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6.5 It is alleged that Chote Lal Thakur, continuously tried to request Respondent No.2 for a personal meeting. After Respondent No.2 refused his requests, it is alleged that Chote Lal Thakur contacted an acquaintance of Respondent No.2 and threatened that he will frame Respondent No.2 in a false case. It is alleged that Respondent No.2 thereafter submitted a letter to the concerned police station on 31.08.2022 detailing the threat received from Chote Lal. He also sent an email on 02.09.2022 *vide* email to Commissioner of Police, Assistant Commissioner of Police and Deputy Commissioner of Police regarding the same.

6.6 It is alleged that Respondent No.2 inquired from the concerned Investigating Officer in FIR No. 309/2022 to proceed against the petitioner and other employees named in the complaint dated 29.06.2022. Respondent No.2 gave the details of the clients who had allegedly made payments directly in the accounts of the petitioner and the co-accused person to the IO on 13.09.2022.

6.7 The petitioner received notice under Section 41A of the CrPC on 07.02.2023. She was granted anticipatory bail in the said FIR *vide* order dated 02.03.2023.

6.8 It is alleged that Respondent No.2 found through his relative that the co-accused person had posted a defamatory tweet on 02.10.2022 stating that Respondent No.2 had exploited her. The tweet also mentioned the name of the complainant's wife and her designation as a judge in the Saket Court. Similar accusations were made in tweets dated 03.10.2022 and 05.10.2022 by the co-accused



person as well.

6.9 Thereafter, Respondent No.2 filed a civil suit against the co-accused person in which the Court *vide* order dated 10.10.2022 granted *ad-interim ex-parte* injunction against the co-accused person directing her to delete the impugned tweets. However, the co-accused failed to remove the same.

6.10 Later, Respondent No.2 found that the petitioner had also published similar defamatory tweets that were almost identical to that of the co-accused person on 30.09.2022 and 01.10.2022.

6.11 It is alleged that as a counter blast to the FIR registered regarding embezzlement of funds, the tweets posted by the petitioner and co-accused person were identical which shows that the accused persons conspired together and posted identical defamatory tweets to defame Respondent No.2.

8. At the outset, it is pointed out that the petitioner has an efficacious and alternative remedy to challenge the impugned orders under Section 397 of the CrPC before the Court of appropriate jurisdiction.

9. The learned counsel for the petitioner submits that even though the impugned orders are revisable, he, however, has instructions to press the present petition.

10. He submits that when the petitioner found out that Respondent No.2's wife is a judicial officer in Saket Court, she had sought her help to settle the pending dispute with her husband.

11. He submits that Respondent No.2 took advantage of the



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petitioner's helpless situation and sexually harassed her on multiple occasions during the course of her employment.

12. He submits that the petitioner is a victim of sexual assault and Respondent No.2 had filed the complaint against the petitioner only because she had rejected his proposal to be his girlfriend.

13. He submits that even though the petitioner was not named as an accused in FIR No. 309/2022, the police officials harassed her under the garb of investigation and pressurised her to compromise the matter, due to which, the petitioner stopped responding to the calls of the officials.

14. He submits that the petitioner received multiple notices from ACP Office, Faridabad, Delhi Woman Commission and also the Sarai Khawaja Police Station regarding her complaint against Respondent No.2 post her tweet on 01.10.2022.

15. He submits that the offence of defamation is not made out as the tweets were posted by the petitioner in good faith and for public good, whereby, the first, third, eighth and ninth exception would apply to the present case.

16. He submits that the summons were never served on the petitioner. He further submits that non bailable warrants were erroneously issued by the learned MM. He submits that the petitioner regularly appeared in court except for a couple dates where she could not appear due to unavoidable circumstances.

17. He submits that the petitioner could not appear on 22.02.2024 before the learned MM as her right hand was fractured.



Conclusion

18. It is settled law that at the stage of issuance of process, the learned Trial Court is supposed to apply its mind to the facts at hand as well as the relevant law. After examination of the allegations and material on record, the learned Trial Court is required to record its satisfaction that sufficient grounds exist for proceeding against the accused. The Hon'ble Apex Court, in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate : (1998) 5 SCC 749***, had observed as under:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of 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 would that be sufficient for the complainant to succeed in bringing charge home to 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.”

19. The Hon'ble Apex Court, in the case of ***Iveco Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya : (2024) 2 SCC 86***, discussed the aspects to be satisfied at the stage of summoning and opined that the Magistrate is not precluded from



considering, at the pre-trial stage, if at all any exceptions to the offence of defamation are made out from the material on record. The relevant portion of the judgment is reproduced hereunder:

*“62. In the context of a complaint of defamation, at the stage the Magistrate proceeds to issue process, he has to form his opinion based on the allegations in the complaint and other material (obtained through the process referred to in Section 200/Section 202) as to whether “sufficient ground for proceeding” exists as distinguished from “sufficient ground for conviction”, which has to be left for determination at the trial and not at the stage when process is issued. Although there is nothing in the law which in express terms mandates the Magistrate to consider whether any of the Exceptions to Section 499IPC is attracted, there is no bar either. After all, what is “excepted” cannot amount to defamation on the very terms of the provision. We do realise that more often than not, it would be difficult to form an opinion that an Exception is attracted at that juncture because neither a complaint for defamation (which is not a regular phenomenon in the criminal courts) is likely to be drafted with contents, nor are statements likely to be made on oath and evidence adduced, giving an escape route to the accused at the threshold. However, we hasten to reiterate that it is not the law that the Magistrate is in any manner precluded from considering if at all any of the Exceptions is attracted in a given case; the Magistrate is under no fetter from so considering, more so because being someone who is legally trained, it is expected that while issuing process he would have a clear idea of what constitutes defamation. **If, in the unlikely event, the contents of the complaint and the supporting statements on oath as well as reports of investigation/inquiry reveal a complete defence under any of the Exceptions to Section 499IPC, the Magistrate, upon due application of judicial mind, would be justified to dismiss the complaint on such ground and it would not amount to an act in excess of jurisdiction if such dismissal has the support of reasons.***

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66. ...At the stage, when the trial court made the summoning order, two aspects were required to be satisfied : (1) whether the uncontroverted allegations as made in the petition of complaint read with the examination of the complainant, prima facie, tend to suggest an offence having been committed, and (2) whether it is expedient and in the interest of justice to proceed.”



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(emphasis supplied)

20. Thus, at the stage of issuance of summons, it is to be seen from the complaint and evidence on record whether there is sufficient ground for proceeding on account of the facts constituting the alleged offence. The observations of the learned MM in this regard, as recorded in the impugned order dated 12.12.2022, are reproduced hereunder:

“7. It is a settled proposition of law that the complainant is only required to establish a prima facie case against the accused persons at the stage of summoning. In the instant case, perusal of the materials available on record would prima facie suggest that certain defamatory tweets were made by the proposed accused persons against the complainant wherein defamatory statements were made against the complainant and his wife. As per the testimony of complainant, the contents of complaint and the material brought on record, it appears that the reputation of the complainant may have been adversely affected and may have wider implications in affecting the reputation of the wife of complainant as well.”

21. The petitioner has been summoned for defaming the complainant. The offence of defamation is defined in Section 499 of the IPC. The same reads as under:

“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 cases hereinafter excepted, to defame that person.”

22. Thus, in order to constitute the offence of defamation, it is essential that the accused person makes or publishes an imputation concerning any person with the intent or knowledge that the same



would cause harm to the reputation of the said person.

23. The Hon'ble Apex Court in the case of ***P.S. Meherhomji v. K.T. Vijay Kumar*** : (2015) 1 SCC 788 had held as under:

“14. It is equally well settled that summoning of an accused in a criminal case is a serious matter and the order taking cognizance by the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court and to quash the proceeding instituted on the complaint but such power could be exercised only in cases where the complaint does not disclose any offence or is vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of power under Section 482.

15. So far as the complaint alleging the offence under Section 499 IPC is concerned, if on consideration of the allegations the complaint is supported by a statement of the complainant on oath and the necessary ingredients of the offence are disclosed, the High Court should not normally interfere with the order taking cognizance.”

(emphasis supplied)

24. From a bare perusal of the complaint and the testimony of Respondent No.2, it is seen that it has been specifically alleged that the tweets in question have impacted the reputation of Respondent No.2 and his wife. The tweet explicitly names the wife of Respondent No.2 and mentions explicitly that she is a Judge in the Saket Courts.

25. Admittedly, the tweets in question were posted publicly and the allegation of sexual exploitation was made by the petitioner against Respondent No.2 therein. *Prima facie*, the tweets made by the petitioner and the co-accused person seem to be worded similarly as



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well.

26. The petitioner has argued that she is entitled to the benefit of first, third, eighth and ninth exception to Section 499 of the CrPC. It is argued that the petitioner is a victim of sexual exploitation and she had posted the tweets in good faith and for public good. It is argued that the complaint case has been filed by Respondent No.2 with the ulterior motive of subjecting the petitioner to undue harassment. As noted above, while the exceptions can be considered at the stage of summoning, however, the same has to be made out from the complaint and supporting statements on oath itself.

27. While the aggrieved victims of sexual harassment must not be subjected to further harassment of having to suffer through frivolous litigation at the behest of their perpetrators, however, at the same time, mere bald allegations on a social media platform, in the opinion of this Court, would not entitle the person making the allegations to the benefit of the defences of the imputation being truthful or the same being made in good faith or for public good when the veracity of the allegations has not been adjudicated.

28. It is correct that in a case where defamation is alleged, the defence of the imputation being truthful can be taken. The same, however, is the subject matter of trial and cannot be presumed at the initial stage when only the summons are issued unless the same is made out from the record.

29. Thus, *prima facie*, at this stage, the defences under the aforementioned exceptions are not made out from the material on



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record in the absence of conviction of Respondent No.2 for the alleged crimes.

30. While it is submitted that the petitioner has made a complaint alleging sexual assault against Respondent No.2 to the concerned DCP, however, it is pertinent to note that the same was made after FIR was registered at the instance of Respondent No.2 for embezzlement of funds. Whether the defences as claimed by the petitioner, including that of the imputation being truthful, would be available to her or not is to be seen during the course of the trial.

31. In view of the allegations levelled in the complaint and the evidence on oath of Respondent No.2, this Court is of the opinion that there are sufficient grounds to proceed against the petitioner for the offence of defamation and the learned Trial had thus rightly issued summons.

32. In view of the above, this Court finds no infirmity in the impugned order dated 12.12.2022.

33. Insofar as the impugned order dated 21.01.2023 is concerned, the petitioner has taken contradictory stands. On one hand, it is argued by the petitioner that she had regularly appeared before the learned MM and was only absent on a couple occasions on account of unavoidable circumstances. It is also submitted that the petitioner works as a beautician and is unable to appear in Court on Saturdays. On the other hand, it is also submitted that the summons were never served on the petitioner.

34. The learned MM had recorded his satisfaction that the summons



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were duly served on the petitioner before observing that the petitioner was deliberately avoiding the summons.

35. As far as the issue regarding the days of hearing is concerned, the petitioner can make appropriate requests before the learned MM for favourable days of hearing that are suitable to Respondent No.2 and the board of the Court as well.

36. In view of the same, this Court finds no reason to interfere with the impugned order dated 21.01.2023 either.

37. The petition is accordingly dismissed.

AMIT MAHAJAN, J

AUGUST 20, 2024