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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of decision: April 16, 2025*

\+ CRL.M.C. 2536/2025

RIYA BALHARA .....Petitioner

Through: Mr. Anshul Sharma, Advocate

Versus

SRIJAN RAJ .....Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

1. Petition under Section 528 of *The Bhartiya Nagrik Suraksha Sanhita, 2023* ('BNSS' *hereinafter*) has been filed by the Petitioner seeking quashing and setting aside of Order dated 09.01.2025 passed by the learned Judicial Magistrate First Class ('JMFC') whereby her Complaint under Section 499/500 *Indian Penal Code, 1860* ('IPC' *hereinafter*) preferred against the Respondent-Srijan Raj, was dismissed.

2. ***The Petitioner – Riya Balhara has asserted*** that her father was having old and friendly relations with one Manish Kumar (Respondent No.2 in the Complaint), who used to visit their house frequently.

3. In September, 2022, Manish Kumar approached her parents for financial help and offered to transfer 1923 shares in EasyApp Tech Private Limited ('ETPL') held by him since incorporation of the Company. In December, 2023 he assured the Petitioner and her parents that he has already informed the Company, through its Board of Directors, to Sell his shares as

per Shares Subscription and Shareholder's Agreement, but has not received any revert and that he is authorized to sell his Shares.

4. On the assurance of Manish Kumar and years old cordial relations with him, Petitioner's father agreed to purchase the Shares held by him in ETPL for a consideration amount of Rs.1,24,93,731/-, which was calculated as per last valuation of the Company at the time of raising funds. A *Share Transfer Deed dated 05.01.2024* was executed between Petitioner and Manish Kumar wherein 1923 shares were transferred in the name of the Petitioner.

5. Thereafter, Petitioner sent an E-mail dated 08.01.2024 to ETPL through its Directors, including the Respondent, to initiate Share Transfer formalities of 1923 shares purchased from Manish Kumar, but no reply was received. She also sent a letter with documents via speed post, but it was returned with the remark *'no such person at the said address'*. The Petitioner sent a reminder email dated 16.01.2024 to the Company stating that in case of no revert; appropriate legal action shall be taken against the Company.

6. Further, in order to cause loss to the Petitioner, the Respondent with other Directors, had forged MGT-7A Form by removing name of Manish Kumar from the Share Holder's List and transferred to the Respondent, so that the Petitioner cannot claim her title on those Shares in the future.

7. The Petitioner filed a Complaint for *criminal conspiracy to commit cheating and criminal breach of trust, dishonest misappropriation of property and forgery by ETPL* and its Directors- Manish Kumar, Respondent - Srijan Raj and Nimit Jain, punishable under Sections

420/417/418/420/465/467/468/120B IPC. On her Complaint, FIR No.554/2024, under Sections 420/468/471/120B IPC, was registered at Police Station K.N. Katju Marg, New Delhi on 14.03.2024 against the accused persons though, no action was taken.

8. Eventually, the Petitioner received an email dated 16.01.2024 from the Respondent wherein it was stated that "*no shareholder could sell shares to a third party as per the Shareholders' Agreement and* ***only a fool or idiot*** *would pursue such things".* The said e-mail was also sent to her father- Parvesh Kumar and his Consultants- Saurabh Jain and Nitin Bansal.

9. The Petitioner alleged that when she confronted the accused persons regarding their misdeeds, they threatened her to harm her body and reputation if she approached police or any judicial authority. She asserted that she had also made a Complaint dated 14.03.2024 to the SHO, Police Station, Begumpur but no action was taken. Also she had filed another Complaint dated 01.04.2024 through speed-post to the Deputy Commissioner of Police, but again no action was taken.

10. The Petitioner thus, filed a Complaint under Section 200 Cr.P.C. before the Court of learned Metropolitan Magistrate seeking investigation and summoning of accused for committing offence under Sections 499 and 503 IPC, punishable under Section 500 and 506 IPC. She alleged that the accused persons had no regard for her integrity and wrote defaming, insulting and degrading e-mail wherein other persons were also the recipients as they were kept in CC.

11. In support of her claim, the Petitioner examined three witnesses, including herself.

12. The learned JMFC *vide* Order dated 09.01.2025 referred to the email dated 16.01.2024 which stated that "*Your are being made a fool to pursue the transfer of shares of Eazy App Tech Pvt. Ltd. Eazy App Tech Pvt. Ltd. is a privately held Company controlled partially by investors and it is illegal to claim shares of such a company without being a shareholder of the company*"

13. The learned JMFC observed that the statement does not refer specifically to the complainant in any manner that imputes dishonour or disgrace, nor does it appear to have been made with the intention of harming her reputation. It appeared to be a general observation about the validity of the Share transaction, in the context of a commercial dispute. The learned JMFC held that the Complainant has not provided sufficient material to demonstrate how the statement caused substantial harm to her reputation or was intended to defame her or caused criminal intimidation to her. The alleged remark do not attract the ingredients of offence under Section 499 IPC or Section 503 IPC.

14. Consequently, the Complaint under Section 200 Cr.P.C. for taking cognizance of the offence under Sections 499/500 IPC or 503/506 IPC, was dismissed.

15. ***Aggrieved by the said Order, the present Petition has been filed***.

16. Essentially, the ***grounds of challenge*** are that the impugned Order dated 09.01.2025 is based on conjectures and surmises. The learned trial Court has failed to appreciate that the Respondent had explicitly used the words "*fool*" and "*idiot*" while referring to the Petitioner-Riya Balhara in the e-mail dated 16.01.2024, which was forwarded as CC to Mr. Parvesh

Kumar, Mr. Saurabh Jain and Mr. Nitin Bansal. The burden of proving good faith for protection of the persons is on the Respondent-Srijan and the learned Trial Court has erred in holding that the Petitioner's Complaint falls under Exception 10 of Section 499 IPC, as there was an intention to caution the Petitioner.

17. Furthermore, it has been wrongly concluded that the email was a private communication as there were more than one recipient of the email. The learned Trial Court though recognized that the words used by the Respondent in the e-mail dated 16.01.2024 are curt, but has erroneously dismissed the Complaint and not appreciated that it has caused great prejudice to the Petitioner as it degraded her image in the eyes of persons who were also part of the said e-mail. Thus, the Petitioner has sought setting aside of Order dated 09.01.2025 .

18. ***Submissions heard and record perused.***

19. The admitted facts of the case are that the Petitioner-Riya Balhara had entered into a *Share Transfer Deed dated 05.01.2024* with one Manish Kumar, who was having shareholding of 1923 shares in ETPL. The Petitioner herself has stated in her Complaint that Manish Kumar had informed that he had written to the Company to seek permission for transfer of shares, to which no revert was received from the Company.

20. The grievance of the Petitioner/Complainant is in respect of her e-mail dated 16.01.2024 addressed to ETPL and its Directors seeking transfer of shares in her name in terms of *Share Transfer Deed dated 05.01.2024*. Respondent-Srijan Raj reverted on the same day, *vide* email dated 16.01.2024 stating that Mr. Manish Kumar was given the shares in EazyApp

Tech Pvt. Ltd. He also signed SSHA (Share Subscription and Shareholders Agreement) in 2020 as per which no share holder is allowed to transfer their shares to any third party who is not a part of the SSHA agreement and he was well aware of it. The e- mail further noted that it seems like either he has been blackmailed/ pressurised to sign such documents or *you are being made a* ***fool*** *to pursue the transfer of shares of EasyApp Tech Private Limited* which is a privately held Company, controlled partially by investors and it is illegal to claim shares of such a Company without being a shareholder of the Company. It was also written that claiming to get involved in the buying-selling of shares of a privately held Company like EazyApp Tech Pvt. Ltd is like a tenant trying to sell the property he/she has rented or a bank officer claiming to own all the money in their bank branch. *Only a fool or an idiot would pursue such a thing.*

21. *First and foremost,* Section 499 IPC.

22. Further, it provides that the words should be such which is intended to harm the reputation of the person or knowing or having reason to believe that such statement would harm his reputation. Section 499 reads as under:

> *"**Section 499. Defamation***
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> *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."*

23. *In the present case*, Respondent had informed the Complainant that though she was seeking transfer of shares under a Share Transfer Agreement executed in her favour by Manish Kumar, but the Company was a privately

held company and by virtue of SSHA all its employees were bound to seek prior permission for transfer of shares. It is in this context, he stated that you have been made a *'fool'* to pursue this share transfer and also an *'idiot' would follow such a transfer*. Clearly, these words were only indicative of her naivety in accepting such an Agreement for Share Transfer in her name at the behest of Manish Kumar, despite the fact that it was against the Company policy.

24. Pertinently, as per Complainant's own assertions, Manish Kumar had also informed her that he had sought the permission from the Company to seek transfer of shares in her name. The words' '*fool*' and '*idiot*' used by the Respondent would not imply that these were used to harm her reputation. Rather, were reflective that the Petitioner had entered into this Agreement without being aware of SSHA. It was intended to convey that her request for transfer of shares of the Company was not tenable in view of the Company policy. Neither these words had the intent nor did they harm the reputation of the complainant.

25. Secondly, the email dated 16.01.2024 sent by the Respondent-Srijan Raj is addressed to the Petitioner-Riya Balhara and CC to the persons concerned and it is a closed email. *It cannot be termed to be a publication or addressed to a third party, who are not concerned with the affairs of the Company*. The learned JMFC has rightly observed that there is no publication as is envisaged under Sections 499/500 IPC.

26. The JMFC has rightly held that there was no case for defamation under Sections 499/500 IPC or of Criminal intimidation under Sections 503/506 IPC.

27. The impugned Order does not suffer from any infirmity and is hereby dismissed. The pending Application(s) are accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 16, 2025/r