



\$~42

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 515/2022**

ARVIND KUMAR @ ARVIND SHARMAPetitioner

Through: Ms. Sanjana Antil, Adv.
through V.C.

versus

MOHIT KATHURIA & ORS.Respondents

Through: Mr. Tushar Rohmetra,
Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **21.05.2025**

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of leave to challenge the order dated 07.07.2022 (hereafter 'the impugned order'), in Complaint Case No. 1421/2018 whereby the learned Trial Court had acquitted the respondents of the offence under Section 500 read with Section 120B of the Indian Penal Code, 1860 ('IPC').

2. The brief facts of the present case are that the petitioner/complainant, who is a hair stylist and makeup artist and runs an institute in the name and style of Arvind's Hair Academy (OPC) Pvt. Ltd., filed an application under Section 156(3) read with Section 200 of the CrPC alleging that the respondents published a defamatory post in regard to his institute which caused great setback and as a result, many students stopped coming to his institute. Respondent Nos. 1 and 3 are stated to be the owners of Fitlook Magazine, and Respondent No. 2 is the brother of Respondent No. 1. It is alleged that in the year 2017, Respondent No. 3 had contacted the petitioner to style Ms. Divya Khosla



Kumar, a renowned actress, who was doing a shoot for Respondent No.1.

3. It is alleged that being satisfied with the skills and expertise provided by the petitioner, Ms. Divya Khosla established a separate professional relationship with the petitioner, which was not appreciated by the respondents. It is alleged that the respondents started harassing the petitioner threatening to defame him on social media, particularly on Instagram. The customers of the petitioner are stated to be reaching out to him through his Instagram ID being *hairstylist.arvindsharma*.

4. It is alleged that on 18.12.2017 Respondent No. 1 posted a story on the Instagram ID of their Magazine stating as under:

"Beware of this Fraud @ hairstylist.arvindsharma he is messaging people through Instagram ID of Fitlook Magazine and asking them to transfer the money in his personal paytm for advertisement. Kindly report. Please post this and help others from this fraudster."

5. It is alleged that the Instagram ID used by Respondent No. 1 to defame the petitioner is followed by thousands of people, thereby defaming him in front of his potential customers. It is alleged that the respondents through their personal accounts also posted various defamatory content against the petitioner and openly abused and threatened him. It is alleged that the petitioner received several mails, messages and comments with regard to the defamatory posts as the respondents were successful in tarnishing the reputation of the petitioner in front of thousands of people. It is alleged that as a result, the petitioner has not got any assignments and is in severe mental pain and agony and has even thought of committing suicide.



6. It is alleged that the petitioner filed a complaint dated 04.01.2018 to SHO Sangam Vihar Police Station *vide* DD No.36B, and when no action was taken, the petitioner filed a complaint dated 10.01.2018 to the DCP, South District, Delhi. The petitioner thereafter filed a complaint dated 24.01.2018 to the Commissioner of Police, however no steps have been stated to be taken in furtherance of the complaints. The petitioner also filed a complaint on 29.01.2018 to the Cyber Crime Cell/ EOW, and when no action was taken, the complaint was filed under Section 156(3) read with Section 200 of the CrPC before the learned Trial Court.

7. The learned Trial Court *vide* order dated 03.02.2018, took cognizance of the offence. After recording the pre-summoning evidence, the learned Trial Court *vide* order dated 16.08.2018, held that there is sufficient material to proceed against the respondents for the offence under Section 500/ 120B of the IPC.

8. Bailable and non-bailable warrants were issued against the respondents, however the same stood cancelled on the applications for cancellation filed by them. Bail bonds were furnished on behalf of the respondents to secure their appearance before the Court.

9. By order dated 21.12.2019, the learned Trial Court referred the matter to mediation to explore the possibility of a settlement between the parties. On 10.02.2021, the petitioner submitted before the learned Trial Court that he had received threats from the respondents and therefore he is not willing to settle the matter. Thereafter, the matter was taken up by the learned Trial Court on merits and listed for post-summoning evidence.



10. It is observed that on 08.04.2022, none appeared on behalf of the petitioner and the matter was then deferred to 07.07.2022 for the appearance of the petitioner and the post-summoning evidence. On 07.07.2022, the learned Trial Court while noting the absence of the petitioner and that no post-summoning evidence had been led by him, closed the post-summoning evidence. The learned Trial Court *vide* the impugned order also acquitted all three respondents and cancelled their bail bonds and discharged their surety.

11. Aggrieved by the impugned order, the petitioner has preferred the present petition praying for the following reliefs:

- a. *“Pass an order thereby setting aside order dated 07.07.2022 passed by Ld. Metropolitan Magistrate, South, Saket Courts, New Delhi, whereby the Ld. MM was pleased to acquit the respondents for the offence under Section 500/120B IPC in proceedings of Complaint Case 1421/2018 (CC NO. 17/1) titled as "Arvind Kumar@ Arvind Sharma & Ors.”;*
- b. *Pass an order to remand back/restoration of the present matter to its original position, for continuation of trial;*
- c. *Pass an order thereby calling the record of the proceedings emanating from Complaint Case 1421/2018 (CC NO. 17/1) titled as "Arvind Kumar @Arvind Sharma & Ors." for fair and proper adjudication of the present case;”*

12. It is pertinent to note that this Court *vide* order dated 20.09.2023 referred the parties to mediation and thereafter mediation sessions were held on a number of occasions from 20.11.2023 to 08.05.2024. However, as per the mediation report dated 18.05.2024, no settlement could be arrived at despite best efforts.

13. It is observed that the complaint was at the stage of post-summoning evidence when it was dismissed on account of non-appearance of the petitioner. It is not disputed that the matter was never heard on merits.



14. Perusal of the record reveals that the petitioner was pursuing the case, however he did not appear on 08.04.2022 and 07.07.2022, which led to the passing of the impugned order. Parties were referred for mediation not only by the Trial Court but also by this Court which also led to delay in adjudication.

15. This Court is of the opinion that the petitioner ought to be given one last opportunity in the interest of justice to lead evidence. At the same time, the respondent should also be compensated for the inconvenience caused to them because of non-appearance of the petitioner.

16. The leave to appeal is granted and the appeal be numbered as Criminal Appeal/2025 (to be numbered).

Criminal Appeal/2025 (to be numbered)

17. In view of the above, the impugned order is set aside and the matter is remanded back to the learned Trial Court for hearing the case on merits and passing an appropriate order in accordance with law.

18. The appeal is allowed subject to payment of cost of ₹10,000/- to each respondent.

19. Proof of payment of cost be submitted before the learned Trial Court.

20. List before the learned Trial Court on 04.06.2025.

21. A copy of this order be sent to the concerned Trial Court for necessary compliance.

AMIT MAHAJAN, J

MAY 21, 2025
“SK”