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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 296/2022**

S JASMAIN SINGH NONIAppellant
Through: **Mr. Abinash K Mishra, Adv.**

versus

S PRABHJOT SINGH GULATI & ORS.Respondents
Through: **None.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **17.03.2025**

1. As per the order dated 29.01.2024 passed by this Court, all the respondents were served except for respondent No.4. However, it appears that later on, the respondent No.4 was served through his wife/Jasbir Kaur and an affidavit of service was duly filed.
2. None of the respondents have cared to appear before this Court despite service of the notice. Accordingly, the present case comes up for *ex-parte* hearing.
3. The present appeal has been preferred by the appellant/plaintiff under Section 104 read with Order 43 Rule 1 of the Code of Civil Procedure, 1908, assailing the impugned judgment dated 22.08.2022 passed by the learned ADJ-01, Karkardooma Courts, Delhi (hereafter **“the Trial Court”**)
4. Having heard the learned counsel for the appellant and on perusal of the record, shorn of unnecessary details, the grievance of the petitioner is that he was contesting the election for the post of member of Delhi Sikh Gurdwara Management Committee which was



scheduled for 22.08.2021. It is submitted that the respondent No.1 was also contesting for the same post from the same ward and the respondent No.1 along with the respondent Nos.2, 3 and 4 collusively created and exchanged objectionable communications against the appellant through the Whats App group created under the name and style of “**SGNSJatha Jheel**” having respondent No.2 as its Admin.

5. It is alleged that the defamatory messages were circulated on 19.08.2021 and 22.08.2021, thereby casting aspersions on the character and reputation of the appellant.

6. Learned counsel for the appellant in this regard has alluded to the messages which are reflected in the paragraph nos. (iv) to (vi) of the appeal paperbook and also reflected in Annexure P-4, the English translated version of which reads as under:

“From yesterday onwards a photo of Prabhjot Singh Gulati is being made viral which was 10 years old. Pictures are being made viral as an election stunt. Now we will tell you as to what has been done and what has not been done by Sd. Jasmain Singh Noni. He used to steal car stereos at Telewara Shahdara. He consumes alcohol and non-veg material on daily basis and even presently he consumes the same. Few days back he was caught at Guru Hargobind Institute with a girl whom he had taken with him after luring her with the promise of giving promotion and what is not done with the said girl in the Institute and is being done even presently after the closing hours of Institute which has been made a spot for the purpose of his debauchery (AYYASHI) for night life. In case you want to know the history of Sd. Jasmain Singh Noni, you should go and ask the people of Teliwara Shahdara and all these news have come to us from Teliwara, Shahdara. So fellow-men should decide and ask for the answers of the same???????”

7. It appears that besides instituting a civil suit seeking damages and compensation on account of defamatory/derogatory/malicious statements made by the respondents/defendants, the appellant has also instituted a criminal complaint *vide* NCR No.28/2022 dated 18.02.2022, which is registered with P.S. Krishan Nagar, Delhi.



8. In the aforesaid backdrop, the learned Trial Court after narrating the facts and circumstances of the case, passed the following order dated 22.08.2022

“Record perused. On perusal of record it is revealed that suit is at initial stage and criminal case is also pending in criminal court as per ld. counsel for plaintiff. It is further revealed that there is CD alongwith NCR filed in the present case and track record has also been filed.

Since criminal case is pending as per ld. counsel for plaintiff, hence the present suit cannot be considered at this stage. Suit of the plaintiff is not maintainable at this stage, therefore, same is dismissed.”

9. *Ex facie*, the aforesaid findings recorded by the learned Trial Court cannot be countenanced in law. The mere fact that the appellant had preferred to institute a criminal complaint on the same set of facts and circumstances, does not debar the appellant from filing a civil suit for the redressal of his common and civil rights. Reference in this regard can be invited to the following observations made by this Court in the case of *Arvind Kejriwal v. Arun Jaitley* [2016 SCC OnLine Del 5589]

“30. A person may be guilty of certain acts which expose him to a criminal prosecution for a criminal offence. A person may use defamatory language against another person who may recover damages against the maker of such a defamatory statement. But the fact that a decree for damages has been passed against him by the civil court, would not stand in the way of him being prosecuted for defamation. There is no reason to see as to how that itself operates as a bar for the respondent's setting in motion the criminal law which is a separate and independent remedy available to an aggrieved person in such a situation. As mentioned above, both the matters between the parties i.e. the civil suit as pending before this Court and the complaint filed by the respondent no.1 before the learned Magistrate are separate and independent proceedings and they can go on side by side. In my opinion, there is no bar to the Magistrate taking cognizance of the offence which he may be of opinion to have been committed by a person whose matter is still pending in a civil court as is the situation in the present case.



31. In view of the above discussion, this Court is of the considered opinion that :

**The Magistrate is empowered to adjourn the proceedings under Section 309 Cr.P.C.*

**There is no legal impediment to invoke the civil proceedings for defamation as well as initiating the criminal proceedings for defamation simultaneously and continuation of the same.*

**The proceedings initiated by the virtue of Delhi High Court (Original Side) Rules, 1967 to invoke the original jurisdiction in the High Court ipso facto does not debar the Court of Magistrate (under the Code of Criminal Procedure, 1973) to proceed with the complaint.*

**Prejudice to the right of the accused is the prime consideration to stay the proceedings. No prejudice to the right of the accused has been demonstrated in the present case.*

32. Nothing has been brought before this Court to the effect that continuation of criminal proceedings is the abuse of the process of law before the learned Chief Metropolitan Magistrate and any order is required by this Court to secure the ends of justice. Thus, this Court is of the view that the order of the learned Chief Metropolitan Magistrate dated 19.05.2016 continuing with the proceedings is free from perversity, impropriety, illegality and non-sustainability which compelled this Court to exercise the inherent jurisdiction under Section 482 Cr.P.C.

33. Keeping in view the discussion made above, there is no illegality or un-sustainability in the law in continuation of the criminal proceedings before the learned Chief Metropolitan Magistrate empowered to continue with the same. Resultantly, the request of the petitioner to adjourn the proceedings before the learned Chief Metropolitan Magistrate is rejected being devoid of merit and the same is culminated into dismissal of the present petition.”

10. In other words, *prima facie*, the alleged defamatory/derogatory remarks have given rise to two different remedies in law, one being the criminal nature and the other being in civil nature for seeking compensation. Although these two proceeding are founded on the same set of allegations, however, these are the independent remedies under the law.



11. In view of the foregoing discussion, the impugned judgment dated 22.08.2022 is set aside. The matter is remanded back to the learned Trial Court for further proceedings in the matter in accordance with the law.

12. Nothing contained herein shall tantamount to an expression of opinion on the merits of the matter.

DHARMESH SHARMA, J.

MARCH 17, 2025
Ch/Ss