

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

% **Reserved on: 13th March, 2015**
Date of Decision: 01st May, 2015

+ CRL.M.C. 447/2013

BIKRAMJIT AHLUWALIA & ORS. Petitioners
Through: Mr. Y.P. Narula, Sr. Adv. with
Mr. Aniruddha Choudhury,
Mr. Abhay Narula & Mr. Ujas
Kumar, Advs.

versus

SIMRAN AHLUWALIA & ANR. Respondents
Through: Ms. Anu Narula, Adv.

CORAM:
HON'BLE MR. JUSTICE V.P.VAISH

JUDGMENT

1. By way of the present petition under Article 227 of the Constitution of India read with Section 482 of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.') the petitioners seek quashing of the criminal complaint case No. 49 of 2012 filed by respondent No.1 in the Court of learned Metropolitan Magistrate-06 (East), Karkardooma Court, Shahdara, Delhi alleging offences under Section 499 read with Section 500 of the Indian Penal Code (hereinafter referred to as 'IPC') alongwith quashing of the summons issued pursuant thereto.

2. Succinctly stating the facts of the present case as emerging from the petition are that marriage between petitioner No.3 and respondent No.1 was solemnized on 26.11.2001 as per Hindu rites, customs and

ceremonies. Out of the said wedlock a female child was born on 04.09.2002. Thereafter, certain differences arose between the said parties and respondent No.1 left petitioner No.3 in April, 2008. At that time, she took along with her their minor daughter who was only five years old. Since then, there have been continuous *inter se* disputes between petitioner No.3 and respondent No.1 which are pending adjudication before various courts. During the course of the said proceedings, pleadings were filed by the petitioners which were taken to be defamatory by respondent No.1 and accordingly a criminal complaint was filed.

3. On the basis of the said complaint case No. 49/2012, the petitioners received summons on 01.02.2013 from the court of learned Metropolitan Magistrate, Karkardooma Courts, Delhi under Sections 500/34 IPC.

4. It is against the said complaint case and the summons received by the petitioners that the petitioners have filed the present petition.

5. Learned senior counsel for the petitioners contended that the complaint is not maintainable as the respondent No.1 has not specified the averments in the pleadings on the basis of which she is resting her claim for defamation. The learned Metropolitan Magistrate committed an error in law in taking cognizance of the complaint for defamation on the basis of records of pending civil proceedings and on the basis of statements recorded by the police under Section 161 Cr.P.C., during the course of investigation of criminal complaints filed by the respondent No.1. Pleadings filed by the petitioner in the civil proceedings as well as the statement made under Section 161 Cr.P.C. cannot be made the basis of the complaint for defamation. Respondent

No.1 has not identified any specific allegations/imputations made by the petitioners against her constituting an offence of defamation of respondent No.1 in public.

6. It was further contended by the learned counsel for the petitioner that the inferences drawn by respondent No.1 on the basis of circumstances and statements made during litigation between the parties cannot be considered defamatory under Sections 499/500 IPC. The police officer, who investigated the complaint of respondent No.1 and witnesses examined under Section 161 Cr.P.C. by the police, cannot be made co-accused in a defamation complaint. Admittedly, respondent No.1 is litigating with the petitioners and the averments made by the petitioners in civil proceedings, which are under adjudication, cannot be made the subject matter of a complaint for defamation. Even if it is presumed that the statements made by the petitioners are defamatory in nature, they would be covered by the fifth exception to Section 499 IPC.

7. It was lastly contended by the learned senior counsel for the petitioners that from the allegations made in complaint and keeping in view the conduct of respondent No.1, it is apparent that respondent No.1 is only interested in implicating the petitioners in false criminal cases by filing false complaints and the said conduct of respondent No.1 amounts to an abuse of the process of Court.

8. In supports of his submissions, learned senior counsel for the petitioners relied upon a catena of judgments which include, **‘Raminder Kaur Bedi v. Jatinder Singh Bedi’**, 1989 (16) DRJ 154; **‘S.P. Satsangi v. Krishna Kumar Satsangi’**, II (2007) DMC 425; **‘Alli Rani Joseph Mathew v. P. Arun Kumar’**, 2013 (1) CTC 661;

‘Gopi R. Mallya v. Smt. Pushpa’, 1997 Kar LJ 216 ; ‘Geetha v. A.K. Dhamodharan’, CDJ 2011 MHC 3809; ‘Re: P. Ramaswami Mudaliar’, (1938) 1 MLJ 810; ‘M.P. Singh Sahni v. State’, Crl.M.C. No. 3779 of 2003 decided on 30.05.2013; ‘Indian Oil Corporation Ltd. v. NEPC India Ltd & Ors.’, AIR 2006 SC 2780 and ‘Shatrughan Prasad Sinha v. Rajbhau Surajmal Rathi & Ors.’, (1996) 6 SCC 263.

9. *Per contra*, learned counsel for respondent No.1 contended that the present petition is not maintainable on the face of it as the trial court is seized with the matter and has taken cognizance on the basis of pre-summoning evidence led by respondent No.1. The trial court summoned the petitioners only after being *prima facie* convinced by the act of defamation by the petitioners. The sole purpose of the petitioners is to malign and defame the image of respondent No.1 before the courts by averting that she has demanded huge sum of money for settlement. The petitioners have always made highly defamatory false statements. In the present petition also the petitioners tried to do the same thing by showing that respondent No.1 has demanded huge sum for settlement of dispute. The petitioners have kept this court in dark by not filing the entire documents on record with the present petition which are relied upon by respondent No.1 before the trial court on the basis of which trial court established a *prima facie* case against the accused persons. The chain of circumstances established by the respondent No.1 in her complaint clearly show the common intention shared by the petitioners and other accused persons in connivance with each other to defame and malign respondent No.1’s character.

10. It was further contended by the learned counsel for respondent No.1 that pleadings filed by the petitioners in civil proceedings, can be quoted out of context and used for filing a complaint for defamation. Any averment made in judicial records containing defamatory statements, amounts to publication as the judicial records are public documents. Fifth exception to Section 499 IPC is not applicable to the present proceedings as it is solely based upon the proposition of good faith, which cannot be decided at a preliminary stage and could only be determined after completion of trial. This Court while exercising its inherent powers cannot quash the complaint only on the basis that the trial will not result in conviction of the accused persons. The opinion given by the IO in the closure reports without any substantive proof on record are not the acts done in official capacity and may have an effect of tarnishing the image of respondent No.1 before the public.

11. It was also contended by the learned counsel for respondent No.1 that despite the defamatory allegations made by the petitioners and other accused persons against respondent No.1, the trial court has ordered to file supplementary chargesheet against the petitioners after finding the truth in the protest petition of the respondent No.1 in FIR No. 273/2010 under sections 498A/406/34 IPC.

12. It was lastly submitted by learned counsel for respondent No.1 that notice under Section 251 Cr.P.C. has already been served on the petitioners and the trial in the complaint case has already commenced. The petitioners did not challenge the notice under Section 251 Cr.P.C.

13. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. I have also perused the material on record.

14. At the outset it may be mentioned that the petitioners have not filed copy of the summoning order passed by the learned Metropolitan Magistrate, Delhi.

15. Before advertng to the facts of the present case, it is pertinent to reproduce relevant provisions of Section 499 IPC which read as under:

“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 cases hereinafter excepted, to defame that person.

Explanation 1-3

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.

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Fifth Exception. – Merits of case decided in Court or conduct of witnesses and other concerned – It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

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16. To constitute 'defamation' under Section 499 IPC, there must be an imputation and such imputation must have been made with intention of harming or with a knowledge or having reason to believe that it will harm the reputation of the person about whom it is made. In essence, the offence of defamation is the harm caused to the reputation of a person. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged.

17. Ingredients of Section 499 IPC were discussed by this Court in '**Standard Chartered Bank v. Vinay Kumar Sood**', 2010 CrLJ 1277 wherein it was observed as under:-

"7. For an offence of defamation as defined under Section 499 IPC, three essential ingredients are required to be fulfilled:-

(i) Making or publishing any imputation concerning any person;

(ii) Such imputation must have been made by words either spoken or intended to be read or by signs or by visible representations.

(iii) The said imputation must have been made with the intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person concerned."

18. Further, as per Explanation 4 to the aforementioned Section, no imputation is said to harm a person's reputation, unless that

imputation directly or indirectly 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, in the estimation of others 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.

19. The fifth exception to the said Section provides immunity to an imputation expressed in good faith regarding the merits of any case decided by a Court of justice or to the conduct of any person as a party, witness or agent in any such case. So far as the protection under fifth exception to Section 499 IPC is concerned it states that accusations preferred in good faith against a person to any of those who have lawful authority over that person with respect to the subject matter of accusations will not amount to defamation. Good faith of the person making accusations is therefore an essential condition of exemption from liability for defamation under this Exception.

20. It is a settled law that to decide whether the imputations amount to defamation, a court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 IPC triable by the Magistrate. In '**Shatrughna Prasad Sinha vs. Rajbhau Surajmal Rathi and Ors.**' (1996) 6 SCC 263 the Apex Court was of the view that:

“13..... It is the settled legal position that a Court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations

might come within the definition of 'defamation' under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie we think that at this stage it is not a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, Ist Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under Section 500, IPC.”

It is also an established principle of law that the burden to prove that a case falls within the exceptions to section 499 IPC is on the party who contends it to exist.

21. Reverting to the facts of the present case, the allegations of defamation raised by respondent No.1 against the petitioners were made on the basis of the imputations made by the petitioners in the civil proceedings and the proceedings arising out of FIR No. 273/2010 under Sections 498A/406 IPC registered at P.S. Preet Vihar, Delhi. Respondent No.1 has filed the complaint before the trial court in view of the following defamatory statements made by the petitioners and other co-accused:

- a) Illicit relation of respondent No.1 with Mr. Aldaan Rajan Sharma for which reason the complainant left the company of her husband;
- b) Respondent No.1 is a money digger who is instituting false and frivolous complaints in order to extort some good amount of money from her in laws as well as using her daughter as a pawn for this purpose;
- c) Respondent No.1 ran away with all her belongings including items not belonging to her;

- d) Respondent No.1 marries for money and troubles her in-laws at the time of Divorce/break-up for marriage;
- e) Respondent No.1 is a characterless person who has/had many relationships;
- f) Respondent No.1 blackmailed and pressurized the accused No.2 to marry her; and
- g) Respondent No.1 is introducing Mr. Aldaan Rajan Sharma as the father of the child.

22. The law is also well-settled that the jurisdiction to quash a complaint, F.I.R. or a charge-sheet should be exercised sparingly and only in exceptional cases and Courts should not ordinarily interfere with the investigations of cognizable offences. However, the law is equally settled that where the allegations made in the F.I.R. or the complaint even if taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, the F.I.R. or complaint may be quashed in exercise of powers under Article 226 or inherent powers under Section 482 of the Cr.P.C. In the leading case of '**State of Haryana v. Bhajan Lal & Ors.**', 1992 *Supp. (1) SCC 335* certain guidelines were issued for the exercise of these powers by the Courts. In guideline number 3 it was laid down that where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and do not make out a case against the accused, the Court may quash the F.I.R. as well as the investigations. A note of caution was added by observing that the power of quashing a criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest of rare cases. It was held that the Court would not be justified in embarking

upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint. Similarly, in ‘**Rupan Deol Bajaj v. K.P.S. Gill**’, (1995) SCC (Cri) 1059 and ‘**Rajesh Bajaj v. State of NCT of Delhi**’, (1999) 3 SCC 259, the Hon’ble Supreme Court clearly held that if a *prima facie* case is made out disclosing the ingredients of the offence, Court should not quash the complaint. However, it was held that if the allegations do not constitute any offence as alleged and appear to be patently absurd and improbable, Court should not hesitate to quash the complaint. A note of caution was added that while considering such petitions the Courts should be very circumspect, conscious and careful.

23. Even at the time of summoning, the Magistrate is not required to conduct a minute analysis of the evidence produced by the complainant. All that is required to be seen is whether the Magistrate has applied his mind and found sufficient reason to proceed against the accused persons. The Hon’ble Supreme Court in ‘**Sonu Gupta vs. Deepak Gupta and Ors.**’, (2015) 3 SCC 424, held as under: -

“8.At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether *prima facie* case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.”

24. Further, the powers of the High Court under Section 482 Cr.P.C. have to be exercised sparingly and not as a matter of routine. The

inherent powers of the High Court under the said Section are meant to act in the interest of justice or to prevent the abuse of the process of court. The scope of the inherent powers of the High Court vested with it under Section 482 Cr.P.C. has been settled by the Supreme Court in a *catena* of judgments. In **‘Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors.’**, 2007 12 SCC 1 the Supreme Court reiterated the scope and powers of the High Court under Section 482 Cr.P.C. while stating that:

“23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 Cr.P.C. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

24. Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”

25. From the perusal of the records and the complaint of respondent No. 1 it is observed that the averments made by the petitioner do *prima facie* appear to be defamatory and injurious to the image of

respondent No. 1. The said imputations are directed towards the character of the said respondent. Thus, at this stage this Court is not convinced with the arguments of the petitioner that not even a *prima facie* case is established against the petitioners for the offence alleged.

26. It has been contended by the learned counsel for the petitioners that the alleged defamatory statements made by the accused persons in the pleadings of previous civil proceedings and statements under Section 161 Cr.P.C. cannot furnish a foundation for their prosecution for defamation in the instant case. This contention does not find favour with this court. The pleadings form a part of the judicial records and form a part of public documents. Anything stated in such pleadings, therefore, amount to the publication of the defamatory statements. Further the statements made under Section 161 Cr.P.C. are only exempted for usage at any inquiry or trial in respect of any offence under investigation at the time when statement was made. So far as the use of such statement made in a separate proceeding for prosecution of an offence under Sections 499/500 IPC is concerned, the bar of Section 162 Cr.P.C. would not be attracted. Statements under section 161 Cr.P.C. can claim only “qualified privilege” and not “absolute privilege”.

27. The other point for consideration in the present case is whether such statements are covered by the exceptions provided under Section 499 IPC. In the opinion of this court the question whether or not such statements are covered under the said exceptions or whether such statements have been made in good faith or not cannot be decided at a preliminary stage and could only be determined at the time of hearing and not under a proceeding under Section 482 Cr.P.C. In ‘**Balraj**

Khanna and Ors v. Moti Ram', *AIR 1971 SC 1389* the Apex Court in this regard was of the view that:

“30. ...It is needless to state that the question of applicability of the Exceptions to Section 499, I.P.C, as well as all other defences that may be available to the appellants will have to be gone into during the trial of the complaint.”

28. In view of the aforesaid discussion, the petition is devoid of any merit, same deserves to be dismissed and the same is hereby dismissed.

Crl. M.A. No.1432/2013 and 8899/2013

The applications are dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

MAY 01st, 2015
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