

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Cr. Revision no. 07/2006

Date of Decision: **17.08.2009**

Thakur Ashwani Singh. vs. Farooq Ahmed Zarger and ors.

CORAM:

HON'BLE MR. JUSTICE J. P. SINGH, JUDGE.

Appearing counsel:

For Petitioner(s) : Mr. Harbans Lal, Advocate.

For Respondent(s) : Mr. P. C. Sharma, AAG.

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| i) | Whether approved for reporting
in Press/Journal/Media | : | Yes |
| ii) | Whether to be reported
in Digest/Journal | : | Yes |
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Inherent jurisdiction of the Court has been invoked, by the petitioner, for setting aside the Chief Judicial Magistrate, Jammu's order of November 30, 2005 dismissing his complaint, seeking initiation of process against the respondents, for defaming him, in showing his complicity in a sex racket pursuant to his and one Ghulam Qadir Bhat's arrest on October 14, 2004.

Taking note of the registration of an FIR and the production of Final Police Report against the petitioner and others, on the basis of the material produced before him, by the petitioner, the learned Chief Judicial Magistrate refused to issue process against the respondents-Police Officers, finding that the Eighth Exception to Section 499 RPC was attracted, as the respondents, connected with the investigation of the police case, were found to have acted in good faith, on the basis of the result of their investigation, in revealing the petitioner's involvement in the sex racket.

Referring to *Smt. Nagauua v. Veeranna Shivalingappa Konjalgi and ors*, reported as AIR 1976 SC 1947, the petitioner's learned counsel urged that the learned Magistrate has erred in refusing to issue process against the respondents when a clear case of defamation had been made out against them in the complaint.

The judgment referred to by petitioner's learned counsel has absolutely no application to the facts of the case, in that, in finding a *prima facie* case for proceeding against the accused, on a complaint, the Magistrate, seized of the complaint, is required to satisfy himself, as to whether or not, the offence complained of, was made out, on the basis of the material placed on the records by the complainant. It is only after being *prima facie*, satisfied, on the basis of the material available on the records, that there were sufficient grounds for proceeding, that the Magistrate gets jurisdiction to issue process against the accused under Section 204 of the Code of Criminal Procedure, Samvat, 1989.

The expression 'sufficient grounds for proceeding', appearing in Section 204 Cr.P.C, means, the existence of a *prima facie* case, which if remained un-rebutted, was likely to result in conviction for the offence alleged to have been committed by the accused.

In other words, the material on the records, should suggest violation of the penal provision(s) of which the opposite party is accused of.

A plain reading of Section 499 read with Section 500 RPC reveals that a person may be said to have defamed the other, in case, the material on the records, indicates him to have, by words either spoken or intended to be read, or by signs or by visible representation, made or published any imputation

concerning any person intending to harm, or knowing or having reason to believe that such imputation would harm the reputation of such person.

This is, however, subject to the condition that the act complained of was not covered by, any one or the other, ten Exceptions, appearing in Section 499 RPC. The material produced by the petitioner himself before the Chief Judicial Magistrate, Jammu which includes the Final Police Report filed by the Police, arising out of FIR no. 80/2004 registered at Police Station, Maharajgunj, Sriangar, indicating his complicity in the sex racket, on the basis of the investigation carried out by the respondents, clearly attracts applicability of the Eighth Exception to Section 499 RPC, to the petitioner's complaint. The material on the records, indicating the petitioner's involvement in the sex racket was, as such, sufficient enough for the dismissal of petitioner's complaint.

In above view of the matter, no *prima facie* offence under Section 500 RPC can be said to have been committed by the respondents in view of their having found the petitioner's complicity in the sex racket, as revealed in the Final Police Report filed with the competent Magistrate for the petitioner's trial.

There is thus no merit in this petition warranting interference in the order passed by learned Chief Judicial Magistrate, Jammu.

This petition is, accordingly, dismissed.

(J. P. Singh)
Judge

JAMMU
17.08.2009
Tilak, Secy.

