

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr. M. M. O. No. 158 of 2008

Date of decision: 31 .3. 2009

Suresh Kumar Chadha and another**Petitioners**

Versus

Hari Krishan and others**Respondent**

Coram:

The Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting ?¹ .

For the petitioners: **Mr. R.L. Sood, Sr. Advocate, with Mr. K.D. Sood and Vikas Rajput, Advocate.**

For respondent **Mr. Satyan Vaidya, Advocate for respondent Nos. 2 and 3.**
 None for respondent No. 1

Surinder Singh, J. (Oral)

Petitioners herein were ordered to be summoned in complaint case No. 34/1 of 2006/1998, filed by respondent No. 1 as accused under Section 500 of the Indian Penal Code vide order dated 26.9.2002 which has been impugned in this petition and also prayed for the dismissal of the complaint filed by respondent No. 1, on the ground of limitation.

Precisely, the facts giving rise to the present petition are that proforma respondent No. 2 Surinder Kumar had lodged an FIR against respondent No. 1 Hari Krishan, under Sections 336 and 506 of the Indian Penal Code in police Station

¹ *Whether the reporters of Local Papers may be allowed to see the judgment ?. yes.*

(East), Shimla wherein after full dress trial, petitioner was acquitted on 28.10.1997 by the learned Judicial Magistrate, giving him the benefit of doubt. According to the complainant-respondent No. 1, the allegations made in the FIR were false and he was put to unnecessary harassment and trial on wrong facts just to defame him and sought action against them under Section 500 of the Indian Penal Code.

In fact the petitioners are said to be the Proprietor of 'Ashiana Restaurant' and also the contractors. They own and possess landed property adjoining to the property of complainant Hari Krishan (respondent No. 1). It is alleged that due to long litigation, the petitioners and other accused were nourishing enmity against him for which he faced the trial aforesaid which was actuated by the malice only to humiliate him. It is alleged in the complaint by respondent No. 1 that on 8.6.1995 the petitioners along with their staff started excavation work of their wall near his house illegally and un-authorizidely. On 11.6.1995 when the repair work of the retaining wall was being carried out, the petitioners and others started threatening them. But on 28.6.1995 FIR under Sections 336 and 506 of the Indian Penal Code was got lodged by respondent No. 2 in connivance with the police who without proper inquiry and investigation, framed him in the case

and was ultimately put on trial but later acquitted by the Judicial Magistrate Ist Class (II), Shimla, as there was no sufficient material to hold him guilty. By this he suffered tremendous mental harassment, agony and loss to his reputation thus sought prosecution of the petitioners and proforma respondents.

Learned trial court recorded the preliminary evidence wherein respondent No. 1 were examined as CW-1 and his witness Shri Anand Sharma as CW-2. After considering the evidence, learned trial court ordered to summon the petitioners as well as proforma respondents as accused in the case to which the challenge has been made in this petition.

Learned counsel for the petitioners put forth two facet arguments, firstly that from the evidence on record, no case is made out against the petitioners and secondly, the learned trial court could not have taken cognizance of the offence as it was barred by limitation.

None appeared on behalf of respondent No. 1 despite the fact that name of his counsel was duly reflected in the cause list.

I have considered the arguments advanced by the learned counsel for the petitioners and have carefully gone through the record of the court below.

Now, I shall deal with the first contention of the learned counsel for the petitioners. In fact, respondent No. 1 neither placed before the learned trial Court, on record the FIR, the certified copy of the judgment passed by the learned Trial court, nor any other document which could even remotely suggest that it was the petitioners and the petitioners alone, who were responsible for lodging the complaint or that at any point of time they had deposed against respondent No. 1 in the court or made any statement to the police during investigation of the case. The bald statement of respondent No. 1 accompanied with the statements of his witnesses, have failed to make it a case for initiating an action for defamation for which the learned trial court has summoned the petitioners in the case. Without any such material, it was not open for the court below even to presume that there were reasonable grounds to summon the petitioners as the accused in this case. Therefore, the summoning order of the petitioners is liable to be set aside.

In so far as the contention No. 2 is concerned, it reveals from the record that it was respondent No. 2 who reported the matter to the police which was recorded in daily diary No. 45 in Police Station (East), Shimla at 10 p.m. which culminated into FIR No. 120/1995 registered on

28.6.1995 against respondent No. 1 that too with respect to the incident which took place on 8.6.1995 and thereafter on 11.6.1995. Respondent No. 1 was put to trial in case No. 215/2002 of 1995 arising out of the said FIR for the offences punishable under Sections 336 and 506 of the Indian Penal Code and was acquitted by the learned Judicial Magistrate Ist Class (II), Shimla by his detailed judgment dated 28.10.1997 by giving him the benefit of doubt.

In the instant case, respondent No. 2 has alleged that he was tried with respect to the incident, on the complaint of respondent No. 2 for the aforesaid offences in which he was acquitted and the incident is alleged to have been taken place on 8.6.1995 and 11.6.1995 and the record reveals that respondent NO. 1 had filed the complaint in the trial court on 30.12.1998 i.e. after three years. The punishment provided for the offence punishable under Section 500 of the Indian Penal Code is imprisonment which may extend to two years or with fine or with both.

Section 468 of the Code of Criminal Procedure puts a bar to taking cognizance of the offence after the lapse of period of limitation. Clause (c) of sub Section 2 thereof provides three years limitation if the offence is punishable for imprisonment exceeding one year and not exceeding three years.

In the instant case, respondent No. 1 did not file the complaint in the court below within three years from the date of alleged incident i.e. on or before 10.6.1998 and in fact, the complaint was filed on 30.12.2008 which is ostensibly barred by limitation as per the provisions of Section 468 above.

Legally the limitation will start not from the date of acquittal but it would start when the cause of action had first arisen from the date of allegations contained in the FIR. Since the complaint was filed after the period of limitation prescribed therefor, the learned trial court could not have taken cognizance of the alleged offence because of the statutory bar.

Thus, in the totality of the circumstances, for the reasons mentioned above, the petition is allowed and order dated 26.9.2002 whereby the learned trial court had summoned the petitioners as an accused in the complaint No. 34/1 of 2006/1998 filed by respondent No. 1 pending in the court of learned Judicial Magistrate, (II) Shimla is hereby quashed and set aside. Consequently, the complaint filed by respondent No. 1 stands dismissed and the proceedings stand closed against the petitioners and other accused persons. The matter stands disposed of.

March 31, 2009
(cm)

(Surinder Singh), J.