HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

561-A 227/2010

Date of decision:08.02.2013

Rahul Kanwal **Vs.** **Brig. P.K.Tikoo and anr.**

Coram:

Hon'ble Mr. Justice Hasnain Massodi, Judge

***Appearing Counsel*:**

For the Petitioner(s) : Mr. D.S.Thakur, Sr.Adv., with
Sh. Inderjeet Gupta, Advocate.
For the respondent(s) : Mr. U.K.Jalali Sr. Advocate with
Mrs. Shivani Jalali, Adv.

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1. Whether approved for reporting in law journals? : **Yes/No**
2. Whether approved for publishing in Press/Media ? : **Yes/No/Optional**

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1. Petitioner is a Television Journalist by profession and working as 'Executive Editor' in Television Channel "Headlines Today". The respondent No.1 is an Army Officer of the rank of Brigadier and claims to have served in Army with distinction during his service carrier stretching over a period of over 34 years. The respondents No.2 is a businessman by profession, who according to respondent No.1 is allegedly involved in number of cases relating to swindling of public property and frequently shifting residence to escape public and police.

2. Petitioner seeks quashment of order of learned Judicial Magistrate Ist Class, Jammu-Special Mobile Magistrate Passenger Tax, Jammu dated 23rd September, 2010 taking cognizance of offence punishable under Section 500 RPC on a complaint filed by respondent No.1 and the criminal proceedings initiated against the petitioner and the respondent No.2.

3. The background facts need to be gone through, in the first instance.

4. The Television Channel Headlines Today on 24th July, 2010 telecast a panel discussion between the petitioner, Lieutenant General (retd.) B.S.Malik, Mr. Shiv Aroor-correspondent of a newspaper and Mr.Manoj Joshi, Deputy Editor Mail Today. The Panel was handed over a copy of the complaint by the representee in the programme by the petitioner, allegedly addressed by the respondent No.2 to Chief of the Army Staff sometime in April, 2010 levelling allegations of threats extended by respondent No.1 to the respondent No.2 and pointing to business dealings between the respondent No.1 and respondent No.2. The Television Channel also handed over the panel a recorded telephonic conversation between the respondents. The

panel during the telecast went through the complaint and also heard the telephonic conversation between the respondents. The contents of the complaint and the conversation were shared by the Television Channel through the panel with the viewers. The panel, as admitted in the present petition, discussed "factual matrix of the complaint and the conversation. The panel also made a general discussion of declining values in the armed forces and need to maintain highest standard of discipline among the armed forces". One of the panellist, as admitted in the petition on hand (para-v), observed that "the conversation between the respondents was deplorable and un-becoming of an Army Officer and that he would be liable to be punished".

5. The respondent No.1 aggrieved with aforesaid telecast dated 20th of July, 2010 filed a complaint under Section 500 RPC read with section 499 RPC before learned Chief Judicial Magistrate on 15.9.2000. Copy of legal notice served by respondent No.1 through his advocate Ms. Madahvi Raina dated 17th August, 2010, copy of the complaint lodged by Ms. Meera resident of 558-59, Subash Nagar Market, New Delhi on 8.6.2000 with

SHO, Police Station, Moti Nagar, New Delhi were appended to the complaint. The complaint was transferred to Judicial Magistrate Ist Class Passenger Tax, Jammu. Learned Magistrate on the date of receipt of complaint recorded a statement of complainant (respondent No.1) and his witness-Raj Bhadur Singh Royal. The compact disc (CD) of telecasted programme in question, and bio-data of respondent No.1 were also annexed with the complaint. The respondent No.1 spelt out grievances in paras 15 to 17 of the complaint. It may be reproduced hereunder:

> *"15) That the complainant most emphatically states that the allegations levelled by the accused no.1 against the complainant in the letter written to the Chief of the Army Staff and the telephonic conversation as telecast by accused no.1 on 20.07.2010 in the TV programme are false, frivolous and per se defamatory and these allegations have caused tremendous humiliation and mental distress to the complainant and also caused irreparable damage to the reputation of the complainant in the society, in his relations, friends and in army circle. The overall import of the said TV programme telecast along with the said telephonic conversation and baseless and incorrect allegations by the accused no.1 against the complainant, is outrageously malevolent, blatantly vindictive, malafide and mischievous in nature and has been made by the accused no.1 person to rouse public hatred, contempt and ridicule from persons from all walks of life and*

has further jeopardized the integrity, prestige, repute, goodwill and future prospects of the complaint in addition caused mental agony.

16) That the accused by making such false and defamatory allegations against the complainant, through the medium of the above stated TV programme, without there being any basis of truth in the same clearly meant or intended to mean that the complainant had acted as a goon capable of any heinous crime and this false statement was made with the intention of lowering the complainant's image in the society including friends, colleagues and senior officers of the complainant. The accused no.1 has made these false allegations with the knowledge and reasonable belief that such imputation will harm the reputation of the complainant and mentally destabilise him from deposing as an expert witness in GCM of his subordinate officers, indeed as TV is a strong visual media form reaching people from every walk of the society.

17) That the accused no.1 by making these false allegations in the light of his manipulated telephonic conversation as telecast by the accused no.2 in said TV programme has actually damaged the reputation of the complainant in his social circle and the complainant has been so adversely effected by said defamatory TV programme and letter written to the chief of Army Staff, based on false allegations and manipulations by the accused, that the friends and colleagues of the complainant have started withdrawing from the complainant's company and dubbing the complainant as a goon since the date of telecast of the said TV programme initiated and manipulated by the accused person. Complainant has become the butt of Jokes severely affecting his credibility as the Head of

> *Department of Military Farms in the Army. The real intention of the accused person was to malign the reputation of the complainant in the social circle as the complainant had given voice to the grievances of a helpless lady duped of her money by the accused. That because of false allegations levelled by the accused person in the aforesaid defamatory TV programme the reputation and image of the complainant in the social circle has been lowered and as such the accused person is required to be strictly dealt with according to the provision of law."*

6. Respondent No.1 to justify filing of the plaint before the Chief Judicial Magistrate, Jammu claimed to have been in Jammu at the time of telecast i.e., 20.7.2002 in connection with some official business. In support of his claim placed on record a certificate issued by Sh. G.N.Chouhan, Deputy Director Military Farm, Jammu.

7. Learned Judicial Magistrate Ist Class Passenger Tax Jammu, on date of receipt of complaint by transfer, itself recorded statement of the complainant and his witness.

8. Learned Magistrate on 23rd of September, 2010 after going through and summarising the allegations levelled in the complaint, and referring to the material available on the file including the statements of complainant and

his witness, recorded satisfaction that the aforesaid material prima facie disclosed commission of offence punishable under Section 500 RPC by the present petitioner and respondent No.2 (accused in the complaint) and that there was sufficient ground for proceedings against them. Learned Magistrate, accordingly, issued summons to the petitioner and respondent No.2.

9. The petitioner seeks quashment of order dated 23rd September, 2010 and the proceedings emanating therefrom on the ground that the complaint and the statements of complainant and that of his witness do not point to commission of offence punishable under Section 500 Cr.P.C; that the respondent No.1 has not denied the telephonic conversation between him and respondent No.2, telecast on 20.07.2010; that the respondent No.1 or his witness do not identify the part of telecast that allegedly harmed reputation of respondent No.1 nor identify the part of telephonic conversation that according to respondent No.1 is manipulated. The learned trial Magistrate is said to have no jurisdiction to entertain and proceed with the case in light of Section 198-B (I) Cr.P.C. It is pleaded

that the trial Magistrate lacked jurisdiction to deal with the matter. It is further pleaded that as the petitioner is not author of the telecast nor has recorded telephonic conversation between respondents No. 1 and 2 and only because he conducted the panel discussion, he cannot said to have committed the offence alleged in the complaint. It is urged that the telecast in question does not refer to Ms. Meera Lalwani and Kulbir Singh about whom a detailed reference is made in the complaint. The telecast according to the petitioner was a debate initiated in good faith and for public good. The telecast and the discussion held, is said to fall within exceptions to Section 499 RPC and therefore not to constitute offence under Section 499 RPC punishable under Section 500 RPC. The trial Court is said to have failed to appreciate that there was no intention on the part of the petitioner to make a defamatory statement against respondent No.1 and that the petitioner mainly discharged duty free from any malice against the respondent No.1. The trial Magistrate is said to have not gone through the contents of the compact disc (CD) enclosed with the in the complaint and fail to discharge duty cast under Section 204 Cr.P.C resulting in harassment of the petitioner. It is insisted that Judicial

Magistrate Ist Class, Passenger Tax, Jammu did not have territorial jurisdiction to entertain the complaint as no offence was committed within the territorial jurisdiction of the learned Magistrate. Petitioner relies on guidelines laid down in "*State of Haryana versus Bhajan Lal*", 1992 (Supp.) 1 SCC 355 to reinforce his claim for quashment of the trail Court order and the proceedings.

10. I have gone through the petition and the record placed on the file. I have heard learned counsel for the parties at length.

11. Inherent powers of the High Court are wide in their scope and because of their plenitude are to be exercised, rarely, sparingly and with circumspection. The Court has to exercise such powers to secure the ends of justice. The Court as laid down in Section 561-A Cr.P.C, is to pass an order in exercise of such powers as may be necessary to give effect to any order or to prevent abuse of process of Court or otherwise to secure the ends of justice. The inherent powers are not to be exercised to hijack a trial or stifle the legitimate prosecution. Hon'ble Supreme Court in "*Padal Venkata Rama Reddy alias Ramu versus Kovvuri*

Satyanarayna Reddy and others", 2011 (5) Supreme 454 after a comprehensive survey of case law on the subject held that though the High Court's inherent power in its scope is very wide, it is rule of practice that it will only be exercised in exceptional case. It was held that the High Court while dealing with the petition invoking its inherent power, is not to enter into an finding of facts and that the power is to be exercised only when no other remedy is available to the litigant and not in a situation where remedy is provided by the statute. The Court held that the inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone Courts exists. The Court referred to the guideline laid down for exercise of inherent powers laid down in "*State of Haryana versus Bhajan Lal*", 1992 (Supp.) 1 SCC 355. The Court also referred to following principles laid down by it in "*Indian Oil Corporation versus NEPC India Ltd. and others"* (2006) 6 SCC 736:

> *"1. The High Courts should not exercise their inherent powers to repress a legitimate prosecution. The power to quash criminal complaints should be used sparingly and with abundant caution.*

> 2. *The criminal complaint is not required to verbatim reproduce the legal ingredients of the alleged offence. If the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence.*
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> 3. *It was held that a given set of facts may make out (a) purely a civil wrong, or (b) purely a criminal offence or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence."*

12. A reference was also made to the following observation made by the Court in State of Orissa and another versus Saroj Kumar Sahoo (2005) 13 SCC 540:

> *"It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."*

13. The court laying down that the High Court when called upon to exercise inherent powers is not to sift and analysis the prosecution case to examine its ultimate chance of success, referred to following observation of Court in "*State of Bihar and another versus Shri P.P.Sharma and another",* AIR 1991 SC 1260:

> *"It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise the power under Section 48 or Article 226 to quash the proceedings or the charge-sheet.*

14. The Court summed up its conclusion as under:-

> *"The powers possessed by the High Court under Section 48 are very wide and at the same time the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a*

> *conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case in which complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no need to analyse each and every aspect meticulously before the trail to find out whether the case would end in conviction or acquittal."*

15. The scope and ambit of inherent powers again came up before the Supreme Court in "*Bhushan Kumar and another versus State (NCT of Delhi) and another*", 2012 (2) Supreme 699 and "*Nupur Talwar versus Central Bureau of Investigation and another*", 2012 (4) Supreme 158.

16. In "*Bhushan Kumar's*" case, quashment of order summoning the petitioner was sought on the ground that the Magistrate while issuing summons did not record reasons. The High Court declined to exercise inherent powers and quash the order passed by the Magistrate under Section 204 Code of Criminal Procedure. The Court emphasised that cognizance merely connotes to take notice of, judicially indicates that the point when a Court or Magistrate takes judicial

notice of an offence with a view to initiate proceedings in respect of such offence said to have been committed by someone, held that cognizance is different from initiation of proceedings and a condition precedent to initiation of proceedings by a Magistrate or the Judge. The Court dilating on the duty cast on a Magistrate under Section 190 and 204 of the Code observed:

> *"8. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.*
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> *9) A summon is a process issued by a Court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been*

started against that person and the date and time on which the person must appear in Court. A person who is summoned is legally bound to appear before the Court on the given date and time. Willful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.

10) Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued.

11) Time and again it has been stated by this Court that the summoning order under Section 204 of the Code requires no explicit reasons to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made

> *in the police report and the materials filed therewith."*

The Court referred to the following observation made in "*Deputy Chief Controller of Imports and Exports versus Roshan Lal Agarwal and others*", (2003) 4 SCC 139:

> "*In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.*"

17. The principle of law was reiterated in *Nupur Talwar's* case by holding that for the purpose of issuing process all that the Magistrate has to determine is whether the material placed before it is sufficient for proceeding against the accused and not to consider at the time of issuing process, the possible defence of an accused.

18. Let us, after a brief survey of case law on the subject, now turn to the grounds urged in the petition, on hand.

19. The main ground urged, to seek quashment of order dated 23rd of September, 2010 and the proceedings emanating therefrom, as noticed, is that the panel discussion during the telecast organised by the

Television Channel headed by the petitioner as its Executive Editor, was made in good faith and in the public interest and that the respondent No.1 in his complaint had not contradicted the complaint addressed by respondent No.2 to the Chief of Army Staff that was read over and referred to in the telecast and the telephonic conversation between the respondent No.1 and 2. The ground urged in the petition on the face of it is the defence that may be available to the petitioner and the respondent No.2 before the trail court and cannot be used to seek quashment of the order whereby cognizance has been taken and process issued to the petitioner-respondent No.2. The other ground set out in the petition, is that the alleged defamatory/libellous material falls within the exception to 499 Ranbir Penal Code. The learned Magistrate as held by Supreme Court in *Nupur Talwar's* case, was not at the initial stage required to consider whether the petitioner and respondent No.2 had a good defence available to them. It is for the petitioner and the respondent No.2 to bring their case within one of the exceptions to Section 499 RPC at appropriate stage in the proceedings. The ground in any case cannot be pressed in service to have the trial court order and the proceedings quashed in

exercise of inherent powers. The ground as regard the failure of Magistrate to record detailed reasons at the time of taking cognizance issuing summons under Section 204, Criminal Procedure Code, in view of the settled legal position, is again of no help to the petitioner.

20. The ground that learned Magistrate in terms of Section 198-B Code of Criminal Procedure lacked jurisdiction to take cognizance of the offence alleged against the petitioner and respondent No.2 and issue process is bound to fail. Section 198-B Code of Criminal Procedure deals with prosecution for the defamation against public servants in respect of their conduct in the discharge of public functions. The expression of public servant in terms of Section 4 (2) of the Code is to be deemed to have the meanings given to the expression in Section 21 Ranbir Penal Code. The petitioner and Executive Editor of private Television Channel is not a public servant within meaning of Section 21, Ranbir Penal Code or at least such an assertion is not made in the petition. The alleged offence against the petitioner-respondent No.2 is not committed in respect of petitioner's conduct in discharge of his public functions. Section 198-B Code of

Criminal Procedure is therefore not attracted in the present case. The petitioner's case that the learned trail Magistrate acted without jurisdiction is therefore devoid of any substance.

21. The petitioner has not pleaded in his petition that the failure on the part of the learned Magistrate to record statement of the complainant and his witness namely Raj Bhadhur Singh Rayal on oath, is fatal to the trial Magistrate order dated 24th of September, 2010 and the Criminal Proceedings initiated against the petitioner. However learned counsel for the petitioner during the course of arguments invited attention of the Court to such failure and its fall out on the impugned order and the criminal proceedings. It is argued that failure to record statements in terms of Section 200 Cr.P.C on oath, strips the statements of credit that these would otherwise have, and resultantly makes the order dated 23rd of September, 2010 based on such statements, liable to be quashed.

22. Section 200 Cr.P.C cast a duty on a Magistrate taking cognizance of offence on complaint, to at once examine the complainant and the witness present, if any, to get the statements reduced to writing and signed by the

complainant and the witness. In the present case, learned trial Magistrate has not examined the respondent No.1 (complainant) and his witness-Sh. Raj Bhadhur Singh Rayal on oath. However their statements were recorded on the very date the cognizance of offence was taken, reduced to writing and got signed by the respondent No.1 (complainant) and his witness. The question arises whether failure on part of the Magistrate to examine the complainant and his witness on oath would go to the root of the matter, make the order issuing process against the petitioner and respondent No.2 liable to be quashed or the lapse is to be taken is a mere irregularity in not vitiating the proceedings.

23. It is pertinent to point out that learned trial Magistrate in the present case had power and jurisdiction to take cognizance of offence and issue process against the petitioner-respondent No.2. The irregularity committed while recording statements of the complainant and his witness, therefore would not vitiate the proceedings. It is equally important to note that the order dated 23rd of September, 2010 is composite order taking cognizance of offence and under Section 204 Cr.P.C. Even if, it is assumed that the learned trial Magistrate did not have

power to take cognizance in absence of statements of respondent No.1 and his witness on oath, yet the lapse within meaning of Section 529 Cr.P.C would be an irregularity not vitiating the proceedings. The case does not fall within ambit of Section 530 Cr.P.C that catalogues the irregularities that vitiate the proceeding, in as much as, cognizance in the present case has not been taken under Section 190, Sub Section 1 Clause (c) of the Code. The aforestated lapse therefore would not vitiate the proceedings and is not to persuade the court to quash trial court order and the proceedings on said ground. Though such a lapse in "*Smt. Gita Devi versus Sudesh Kumar Sharma"*, 2006 (II) S.L.J, 578 in the facts and circumstances of the case, was held to have been error on part of the Magistrate taking cognizance yet in Criminal Revision No. 26/2012 titled Sheikh Mohammad Amin and others versus Mst. Rifat Farooq, where primary statement of complainant and the witnesses, as in present case, were not recorded on oath, the Court refused to quash, in exercise of its inherent powers under Section 561 Cr.P.C, the order whereby cognizance was taken and process directed to be issued. The petition therefore is not succeeded on the aforesaid ground.

24. All other grounds urged in the petition like absence of any reference to Ms. Meera Lalwani and Kulbir Singh seen in the telecast, the relationship between the respondent No.1 and the witness produced by him before the Magistrate at the preliminary stage, the factum of presence of respondent No.1 at Jammu on the date of telecast, role of the petitioner in conceptualisation of the telecast, the factors that prompted the petitioner to organise the telecast etc. are factual in character and depend upon evidence that is to be produced before learned trial Magistrate.

25. This court cannot in exercise of inherent powers step in the shoes of the trial court and return a finding on veracity of the stand taken by the petitioner or creditworthiness of the evidence the parties may, down the line, bring on record during the trial. This court in exercise of inherent powers cannot look into question of spill over of the telecast on his reputation and standing in the society. The petitioner in his complaint in general and in paras 15, 16 and 17 has spelt out in detail the fall out of the telecast on his reputation and intention as well as knowledge on the part of the respondent No.2 that the imputation allegedly made was to harm the

reputation of respondent No.1. The trial Magistrate accordingly recorded satisfaction that prima facie commission of offence punishable under Section 500 RPC was made out and that "there is sufficient ground for proceeding in the matter". There is no reason to dispute the satisfaction so recorded.

26. Against the said backdrop, the grounds urged in the petition, when examined on the touch stone of settled legal principles right from "*R.P.Kapur versus State of Punjab, AIR 1960 SCC 866*, "*State of Karnataka versus L.Muniswami and others*" AIR 1977 SC 1489, and emphasised all along, do not disclose any merit. The petition is, accordingly, **dismissed**.

27. Record be returned so that trial that got delayed due to the pendency of the instant petition, commenced forthwith.

(Hasnain Massodi)
Judge

Jammu

08.02.2013
Surinder