

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 25.05.2022

Date of Pronouncement: 29.07.2022

CRMC No. 386/2013
c/w CRMC No.21/2014

Sanjay Gupta

...Petitioner(s)

Through: Mr. Rakesh Badyal, Advocate.

v.

Ch. Lal Singh

...Respondent(s)

Through: Mr. Asheesh Singh Kotwal, Advocate.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

J U D G E M E N T

- 1) Inherent jurisdiction enshrined in Section 482 of Code of Criminal Procedure (Cr.P.C.) (previously Section 561 Cr.P.C.) is being invoked for quashment of complaint titled as *Ch. Lal Singh and others v. Abhimanyu Sharma and others* (for short, '*impugned complaint*'), as well as consequential proceedings including order dated 09.07.2013 (for short, '*impugned order*') pending before the court of learned Chief Judicial Magistrate, Kathua, (for short, the '*court below*').
- 2) The facts, under the shade and cover of which the instant petition has been filed by the petitioner reveals, are that the impugned complaint came to be filed by the respondent-herein against petitioner-herein before the court below for commission of offence punishable under Section 500 of Indian Penal Code (IPC). The said complaint is stated to have been filed on the premise that the petitioner herein on 10.03.2013 printed and published against the complainant in his Newspaper "Daily Jagran" a false, frivolous, concocted and insulting news report, bringing the complainant into disrepute in the society, damaging his dignity, besides, defaming his honour, thus, committing an offence under Section 501, 502, 120-B RPC.

- 3) It is being stated by the petitioner that whatever was published by the petitioner in the newspaper, was on the basis of the proceedings happening in the Hon'ble Division Bench of this Court in WPPIL No.19/2011 and its ancillary cases. Moreover, the petitioner published the contents of the applications moved by one Shri S. K. Bhalla and Charanjit Singh, the then MLA Kathua. In nutshell, it is submitted that the petitioner was performing his professional duties and published the news items on the basis of pleading of the parties pending adjudication between the parties before the Hon'ble Division Bench. Thus, it is stated that the petitioner did not commit the offences punishable under Section 501, 502 and 120-B RPC.
- 4) It is further stated that the impugned complaint does not make out a *prima facie* case against the petitioner and the same is vague, false, frivolous, vindictive, malicious, precipitated with malice and untenable in law, intended to coerce, harass and intimidate the petitioner. It is being stated that the case is clearly exceptional one and non-interference by this Court under inherent power will jeopardize the ends of justice and the Rule of Law and that the allegations in the complaint at its face value, taken in entirety are improbable and that the allegations are so absurd and inherently improbable that no prudent person can ever reach the just conclusion that there is a sufficient ground for proceeding against the petitioner and that the allegations made in the complaint are only figment of imagination, a result of criminal conspiracy against the petitioner and that the instant case is a fit case for the exercise of jurisdiction under Section 482 Cr.P.C. for quashing the impugned order and proceedings emanated therefrom and that it would be an abuse of process of Court to allow any action which would result into injustice and prevent promotion of justice.

Heard learned counsel for the parties, considered the matter and perused the record.

- 5) Having regard to the facts and circumstances of the case, the ambit and scope of inherent jurisdiction of this Court needs to be referred to as laid down in *State of Haryana v. Bhajan Lal reported in 1992 Supp. (1) SCC 335*. The Apex Court has elaborately considered the scope and ambit of

Section 482 Cr. P.C. and Article 226 of the Constitution of India in the context of quashing an FIR or complaint or proceedings emanating therefrom. After noticing various earlier pronouncements, the Apex Court enumerated certain categories of cases by way of illustration, where the power under Section 482 Cr. P.C. can be exercised to prevent abuse of the process of the Court or to secure ends of justice. Paragraph 102, which enumerates seven categories of cases where power can be exercised under Section 482 Cr.P.C., are extracted as follows:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are 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.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

- 6) Keeping in mind the aforesaid principles of law, the contention raised in the instant petition may be adverted to. However, before proceeding further, it would be advantageous and appropriate to refer to Section 499 RPC and Fourth Exception appended thereto, being relevant herein:-

“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...

Fourth Exception.—Publication of reports of proceedings of Courts—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.”

A conjoint reading of the aforesaid provisions would reveal that the same brings under the criminal law the person who publishes as well as the person who makes defamatory imputations. It emphasizes the word “publishes”. The gist of the offence of defamation lies in the dissemination of the harmful imputation. Therefore, in brief, the essentials of defamation are firstly the words must be defamatory, secondly, they must refer to aggrieved party, thirdly they must be maliciously published. The explanations appended to the section amplify the scope of the section whereas the Exceptions take certain things out of the application of the section. Thus, in order to constitute an offence of defamation the essential ingredient is to make an imputation concerning any person with intention to harm or with a knowledge or reason that such imputation will harm the reputation of the said person. An imputation without an intention to harm or without knowledge or having reason to believe that it will harm the reputation of such person will not constitute an offence of defamation. The Exception Fourth supra postulates that where there are proceedings before

the properly constituted court/tribunal exercising its jurisdiction, then the publication without malice of a fair and accurate report of what takes place before the court/tribunal is privileged. Though the publication of such proceedings may be to the disadvantage of the particular individual yet it is of vast importance to the public that the proceedings of the courts of justice should be universally known.

Keeping in mind the aforesaid position of law, publication in question, out of which the complaint has arisen prima facie reveals that same has reference to the proceedings of the High Court in PIL supra. Seemingly there is no *mens rea* or *actus rea*, sine qua non for constituting an offence of defamation in the instant case committed by the petitioner against the respondent/complainant. The case in hand is squarely covered by the Fourth Exception to Section 499 and a fit case for exercising the inherent jurisdiction in view of the law laid down by the Apex Court in the case titled as *State of Haryana and others versus Bhajan Lal* reported in *1992* supra.

- 7) For all what has been observed, considered and analyzed hereinabove, the petition in hand deserves to be accepted and is, accordingly, **allowed**. The complaint titled as *Ch. Lal Singh and others v. Abhimanyu Sharma and others*, as well as proceedings initiated thereon under Section 501, 502 RPC and 120-B RPC, including order dated 09.07.2013, are **quashed**.
- 8) Disposed of. As a corollary thereof, petition, being CRMCno.386/2013, is also disposed of on the above lines.
- 9) Copy of this order be sent down.

(JAVED IQBAL WANI)
JUDGE

JAMMU
29.07.2022
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Whether approved for reporting? Yes/No