

**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**SUBJECT : CODE OF CRIMINAL PROCEDURE**

CRL.M.C. No.3350/2008

Date of Decision: 23 .03.2012

SANJAY MISHRA

..... PETITIONER

Through: Mr. J.C. Mahendru, Advocate with petitioner in person.

Versus

GOVT.OF NCT OF DELHI &ANR.

..... RESPONDENTS

Through: Ms. Fizani Husain, APP for State

Mr. Bijender Singh, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This is a petition under Section 482 Cr.P.C. for quashing of the Complaint under Section 500 IPC in Case No. 1832/1 and proceedings emanating thereof, pending before the Ld. M.M. The petitioner was summoned in the case on 09.03.2007 and the case is at the stage of post summoning evidence.

2. The complaint was filed against the petitioner by the respondent no. 2 who is his mother-in-law. The petitioner had filed a petition for divorce against his wife i.e. the daughter of respondent no.2. The said divorce case already stands dismissed. Allegedly in the rejoinder and additional submissions to the written statement filed by his wife in the divorce case, the petitioner had made some serious allegations about the character of the respondent no.2 and his wife.

3. The criminal complaint of defamation is sought to be quashed by the petitioner on the ground that the Ld. M.M. has not appreciated the facts of the case and the publication of the alleged defamatory statements made by the petitioner. The learned counsel for the petitioner submitted that the pleadings made in all the cases are confidential and since the proceedings

are held in camera, there was no question of the respondent no.2 and his wife being defamed. It is contended that the said criminal complaint has been filed by respondent no.2 against him as a counterblast to the divorce case filed by him.

4. Per contra, the learned counsel for the respondent submitted that the imputations made by the petitioner in his replication and additional submissions are an attack on the chastity of respondent no.2 and her daughter. It is further submitted that the allegations made by the petitioner are a direct attack on the entire family of respondent no.2 and is extremely damaging to the reputation of her family and are not only false and frivolous, but defamatory, libelous and derogatory. It was submitted that the order of Ld. M.M. was based on the material on record and statements of the witnesses and should not be interfered with.

5. I have heard learned counsel for the petitioner as well as the respondent and perused the record.

6. The criminal law on defamation has been codified and is contained in section 499 to 502 of the Indian Penal Code. For an offence of defamation as defined under section 499 IPC, three essential ingredients are required, to be fulfilled as laid down in the case of Standard Chartered Bank v. Vinay Kumar Sood, 2010 CriL.J 1277:-

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”.

7. Thus, it is clear that the mens rea to cause harm is the most essential sine qua non for an offence under section 499 IPC. To constitute “defamation” under Section 499 of the IPC, there must be an imputation and such imputation must have been made with intention of harming or knowing 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. An offence punishable under section 500 IPC requires blameworthy mind and is not a statutory offence requiring no mens rea.

8. From the perusal of the replication and additional submissions made by the petitioner in the divorce proceedings, it is seen that the averments made by the petitioner were in fact highly defamatory and injurious to the image and reputation of the respondent no.2 and her daughter. There are allegations that the respondent is a woman of shady character and is involved in prostitution along with her daughter and this is the reason that the marriage of the petitioner and daughter of the respondent could not work. There are serious attributions made by the petitioner that this respondent/complainant was involved in extra marital affairs and it was the cause of death of her husband. Many more such distasteful remarks have been made by the petitioner against the entire family of respondent no.2 and it is not desirable to quote them in detail, considering their defamatory and scandalous disposition. Thus, there can not be any dispute regarding the defamatory overtone of the replication filed by the petitioner. Consequently, the submission of the counsel for the petitioner that the Ld. M.M. had proceeded in the case without appreciating the material on record, is baseless and stands rejected. It is evident that the Ld. M.M. had given due consideration to the scandalous and wild allegations made by the petitioner and has rightly proceeded in the matter. It is regretful that such defamatory remarks are passed by the petitioner against his mother in law i.e. respondent no.2 and her family without any regard, whatsoever to the dignity and morality of women.

9. The contention of the counsel for petitioner that the criminal case for defamation is filed as a counter to the divorce case, is also untenable as it is clear that there were sufficient reasons for filing of this complaint. No respectable women could accept such outrageous and disgraceful remarks made against herself and her family by any person, particularly son-in-law, and not take a suitable action in this regard.

10. With regard to the contention of the counsel for the petitioner that the pleadings made in all the cases are confidential and the proceedings were held in camera and hence there was no question of the respondent no.2 and her daughter being defamed, it would suffice to say that the legal proposition in this regard is settled. The replication filed in the Court forming part of

judicial record, is a public document and thus pleadings amount to publication of the defamatory statements made by the petitioner.

11. In *Sandyal v. Bhaba Sundari Debi* 7 Ind. Cas.803 : 15 C.W.N. 995 : 14 C.L.J. 31 the learned Judges, following the case of *Augada Ram Shaha V. Nema Chand Shaha* 23 C. 867;12 Ind. Dec. (n.s.) 576, held that defamatory statements made in the written statement of a party in a judicial proceedings are not absolutely privileged in this country, and that a qualified privilege in this regard cannot be claimed in respect of such statements, unless they fall within the Exceptions to Section 499 of the Indian Penal Code. Undisputedly, the case of the petitioner was not in any of these Exceptions.

12. For criminal purposes “publication” has a wider meaning than it has in civil law, since it includes a communication to the person defamed alone. The prosecution for defamation in criminal cases can be brought although the only publication is to the person defamed as it is very likely to provoke a breach between the persons involved. Moreover, it is recorded by the trial Court that the petitioner has made these kinds of allegations to the relatives and friends of respondent no.2 and her family via telephone also, thereby lowering their reputation in the society. Consequently, it cannot be said that there was no publication of the defamatory statements made by the petitioner.

13. On perusal of the evidence on record and statements of witnesses, I am of the opinion that the case cannot be thrown out at its inception when there is enough evidence pointing towards the prima facie commission of the offence by the petitioner. Thwarting the prosecution case which is in its nascent stage would tantamount to miscarriage of justice. Similar issue was raised in *M.N.Damani Vs. S.K.Sinha*, AIR 2001 SC 2037. In this case, the petitioner had gone in appeal against the order of High Court quashing the criminal complaint filed by the petitioner under Section 500, 499 IPC. Allowing the appeal, the Apex Court opined that the High Court at preliminary stage cannot say that there was no reasonable prospect of conviction resulting in the case after trial. It was held that questions that whether the imputations were made in good faith, in what circumstances, with what intention etc. are to be examined on the basis of evidence in trial. It was further held that quashing of complaint at preliminary stage is not proper; when from the sworn statements and documents produced by the petitioner a prima facie case can be said to have been made out against the respondent.

14. The powers of High Court under Section 482 CrPC are to be exercised sparingly and not as a matter of routine. Inherent powers of High Court under Section 482 CrPC are meant to add ex debita justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of court. In Janata Dal Vs. H.S.Chowdhary, (1992) 4 SCC 305, the Supreme Court observed that in what circumstances the inherent powers should be exercised:

“132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles”.

15. Further, in B.S.Joshi Vs. State of Haryana, (2003) 4 SCC 675, the Supreme Court reiterated the legal position that the Court's inherent powers have no limit, but should be exercised with utmost care and caution. Inherent powers must be utilized with the sole purpose to prevent the abuse of the process of the court or to otherwise secure the ends of justice.

16. In the light of the above judicial pronouncements and the facts and circumstances of the case, I do not find any illegality or impropriety in the order of the trial Court and the proceedings of the criminal complaint case against the petitioner.

17. Petition being without any merit is hereby dismissed.

Sd/-  
M.L. MEHTA, J.

MARCH 23, 2012