

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

Reserved on: 08.07.2024

Pronounced on: 20.07.2024

CRMC No.129/2017

c/w

RP No.48/2019

SATYA PRAKASH ARYA

...PETITIONER(S)

*Through: - Mr. Z. A. Qureshi, Sr. Advocate, with
Mr. Agha Faisal Ali, Advocate.*

Vs.

SYED ABID JALALI

...RESPONDENT(S)

Through: - None.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged the complaint filed by respondent against him before the Court of learned Chief Judicial Magistrate, Srinagar (hereinafter referred to as "the Trial Magistrate"), alleging commission of offences under Section 499 of RPC read with Section 500 and 201 of RPC. Challenge has also been thrown to order dated 23.06.2016 passed by the Trial Magistrate whereby process has been issued against the petitioner.

2) It appears that the respondent has filed a complaint against the petitioner before the learned Trial Magistrate alleging therein that in the usual course of mercantile transactions, he was conducting business of sale and purchase of jewellery and other articles with the petitioner for so many years. It has been alleged in the impugned complaint that in the year

2013, during the course of the business, the respondent/complainant issued three cheques for an amount of Rs.14.00 lacs for clearing the outstanding liability and in this regard, an agreement was executed between the parties. In spite of this settlement, the petitioner/accused filed an application before the Chief Judicial Magistrate, Jaipur against the respondent/complainant which was referred to the police for investigation. On the basis of this complaint, FIR No.247/2014 was registered and after investigation of the case, chargesheet was laid against the respondent/complainant before the Chief Judicial Magistrate, Jaipur. It is further alleged in the impugned complaint that during the course of hearing of the bail application before the Sessions Judge at Jaipur, the petitioner herein levelled serious allegations concerning the reputation of the respondent alleging that the respondent belongs to outlawed organization "Hizbul Mujahideen", which resulted in rejection of his bail application.

3) It has been alleged in the impugned complaint that in view of the baseless and defamatory allegations levelled by the petitioner in the Court, the said news was published in various newspapers at different places where the respondent/complainant conducts his business and it was reported that the respondent/complainant is involved in terrorist and sabotage activities being a militant of the outlawed and banned organization "Hizbul Mujahideen". This according to the respondent/complainant resulted in loss of his reputation and good-will

not only in Goa where he carries on his business but also in Jammu and

Kashmir where he is residing and is purchasing commodities of Kashmiri Handicrafts for its sale.

4) It has been further alleged in the impugned complaint that because of rejection of bail application of the respondent/complainant, he had to approach the High Court of Rajasthan but his application was again resisted not only by the prosecution but also by the petitioner. The High Court of Rajasthan while adverting to the arguments of the counsel appearing for the petitioner/accused that the respondent/complainant is associated with terrorist organization “Hizbul Mujahideen”, referred the matter to National Investigating Agency. The High Court issued a direction for registration of a case after taking appropriate sanction from the concerned Ministry and to investigate the matter. It has been submitted that the bail application was finally taken up for disposal on 17.05.2016 after a detailed report was filed by the National Investigation Agency in which it was categorically stated that the respondent/complainant is not involved or associated with any terror group including “Hizbul Mujahideen” Accordingly, he was admitted to bail by the Rajasthan High Court.

5) It has been further averred in the impugned complaint that due to the actions of the petitioner herein, the respondent/complainant has been subjected to illegal detention and he has suffered loss not only to his reputation but also to his trade in Goa and in the State of Jammu and Kashmir. It has been alleged that the petitioner/accused has, with

malicious design, defamed the respondent/complainant and in this regard certain news items were published in different newspapers including the Daily Times of India.

6) On the basis of aforesaid allegations, the complainant sought prosecution of the petitioner /accused for offences under Section 499, 500 and 501 RPC. The learned Trial Magistrate, after recording preliminary statements of the respondent/complainant and his witness, namely, Syed Mohammad Jalali, who happens to be his father, passed the impugned order dated 23.06.2016, whereby satisfaction has been recorded that, prima facie, the petitioner/accused has committed offences under Section 499 RPC read with Section 500 and 501 of RPC. It has also been observed in the impugned order that the act has not only been done at Jaipur, Goa but its consequences have ensued at Srinagar, as such, the said Court does have jurisdiction in terms of Section 179 of J&K Cr. P.C. Accordingly, process has been issued against the petitioner herein.

7) The petitioner has challenged the impugned complainant and the impugned order on the ground that the allegation that the respondent was associated with Hizbul Mujahideen outfit was made by counsel for the petitioner without his advice and consent. It has been further submitted that the counsel for the petitioner had filed an application in this regard before Rajasthan High Court. It has been also contended that the alleged act has been committed at Jaipur, as such, the Trial Magistrate at Srinagar did not have jurisdiction to entertain the impugned complaint. It has been

further submitted that there is no allegation in the impugned complaint to the effect that the petitioner was responsible for publishing any defamatory news item against the respondent/complainant and, as such, it cannot be stated that the offence of defamation is made out against the petitioner. It has been further contended that even otherwise ingredients of offence under Section 499 of RPC are not made out in the present case from the contents of the complaint and the statements of the witnesses.

8) Initially, the respondent/complainant contested this petition by filing a reply thereto but subsequently the respondent and his counsel stopped appearing in the case and, accordingly, the respondent has been set *ex parte* and the arguments were heard in *ex parte*.

9) In the reply filed by the respondent, it has been contended that the petitioner had filed a petition seeking transfer of the impugned complaint from Srinagar to Jaipur before the Supreme Court but his prayer was declined, as such, the instant petition is not maintainable. It has been further averred in the reply that the petitioner did not disclose before the Courts at Jaipur that the contentions raised by his counsel, while resisting the bail application of the petitioner, are not based upon his instructions and instead he chose to remain silent which resulted in illegal detention of the respondent. The allegations made in the impugned complaint have been reiterated in the reply filed by the respondent.

10) I have heard learned Senior Counsel appearing for the petitioner and perused record of the case including record of the trial court.

11) The petitioner has challenged the impugned complaint and the order passed by the learned Trial Magistrate whereby process has been issued against him, primarily, on two grounds, one that no offence of defamation is made out from the contents of the impugned complaint and the preliminary evidence produced by the complainant before the Trial Magistrate and, secondly that the learned Trial Magistrate did not have territorial jurisdiction to entertain the impugned complaint.

12) Before determining merits of the aforesaid two contentions, it has to be borne in mind that where only a direction for issuance of process under Section 204 of Cr. P. C is given, the High Court has to refrain itself from passing any observation so that case of either side may not be prejudiced. At this stage no interference is ordinarily called for under Section 482 of the Cr. P. C unless and until it is shown that from the allegations and the evidence appearing on record, if taken at their face value, no case is made out or where the discretion exercised by the Magistrate is capricious or arbitrary. Interference under Section 482 of the Cr. P. C is also warranted in a case where the complaint suffers from some legal defect.

13) As already stated, the crux of the allegations made in the impugned complaint against the petitioner is that during the course of arguments of bail application of the respondent, the counsel for the petitioner contended before the Courts at Jaipur that the respondent was associated with banned organization “Hizbul Mujahideen”, which has resulted not only in

dismissal of his bail application by the Sessions Court but has also resulted in injury to his reputation and business. The first question that is required to be answered is whether any defamatory allegations made, either in the pleadings or during the course of arguments, before a court of law can form a basis for prosecution for offence of defamation.

14) The law is well settled that when pleadings containing defamatory material are relied before a court of law, the same amounts to publication within the meaning of Section 499 of RPC. In **Thangavelu Chettiar vs. Ponnammal**, (AIR 1966 Mad. 363), it has been ruled that filing of a plaint or petition containing defamatory material amounts to publication. Relying upon the aforesaid ratio of Madras High Court, Madhya Pradesh High Court has, in the case of **Trichinopoly Ramaswami Ardhanani and others vs. Kripa Shankar Bhargava**, 1991 M.P.L.J 597, held that *per se* defamatory statements in pleadings, petitions, affidavits etc. of the parties to judicial proceedings constitute offence punishable under Section 500 of IPC unless they fall within the exceptions enumerated in Section 499 of IPC. Taking a cue from this, it can safely be stated that even the arguments made by a counsel upon instructions from his client, which are *per se* defamatory in nature, can form basis for prosecution of such client for offence under Section 499 of RPC. Therefore, the contention of learned Senior Counsel appearing for the petitioner that the submissions made by counsel for the petitioner during the course of arguments on bail application of the respondent before the Court at Jaipur cannot form basis

for prosecution of the petitioner for offence under Section 499 of RPC, is not tenable.

15) That takes us to the question whether the learned Trial Magistrate had territorial jurisdiction to entertain the impugned complaint and to pass the impugned order thereby issuing process against the petitioner. In the instant case, admittedly, the alleged defamatory submissions were made by counsel for the petitioner before the Sessions Court and the High Court at Jaipur, Rajasthan. So, the publication of alleged defamatory statements has taken place within the territorial jurisdiction of the Courts at Jaipur.

16) The respondent/complainant along with his complaint has placed on record a copy of the newspaper cutting of Daily Hindustan Times dated May 18, 2016, in which it has been reported that Rajasthan High Court had granted bail to the respondent who had been jailed for six months on the charges of links to Hizbul Mujahideen militant group. It has also been reported in the newspaper that the respondent had been sent to Jaipur jail on the basis of complaint made by the petitioner accusing him of not returning ornaments worth Rs.25.6 lacs. Another clipping of newspaper The Economic Times dated 17th June, 2016 has also been annexed with the impugned complaint in which it has been reported that the respondent/complainant had landed with the NIA after it was alleged that he was associated with banned terror outfit Hizbul Mujahideen and it was further reported that according to NIA officials, the respondent is engaged in business of jewellery in the Valley and he had business links with the

petitioner herein. In the news report, it was also reported that the NIA is all set to absolve the respondent of terror charges. Third newspaper cutting of the daily newspaper Kashmir Observer dated 19th May, 2016, has also been annexed to the impugned complaint, according to which the respondent was released on bail by Rajasthan High Court after NIA gave him a clean chit. It was further reported that the counsel for the respondent, Shri Rajeev Surana had told the media that the petitioner had levelled allegations against his client that he belonged to a militant group

17) From the aforesaid newspaper clippings/reports, it is clear that none of these news reports are defamatory in nature. In all these news reports, it has been publicized that the respondent/complainant was given a clean chit by NIA and that he has no terror links and because of this reason he was granted bail by the Rajasthan High Court. So, publication of these news reports cannot form basis for prosecution relating to offence of defamation against the petitioner. In any case, none of these news reports seems to have been published at the instance of the petitioner and, in fact, one of the news reports has been published at the instance of counsel for the respondent. Thus, publication of news reports annexed to the complaint cannot form a basis for prosecution of the petitioner for offence of criminal defamation.

18) The only act which has resulted in defamation of the respondent has taken place within the local limits of the Courts at Jaipur, when counsel for the petitioner is alleged to have argued before the courts at Jaipur that

the respondent is having terror links. None of these acts has taken place within the local limits of the Courts at Srinagar. It is not a case where the news reports were published at the instance of petitioner and the same got circulated in different parts of the Country including the State of Jammu and Kashmir but it is a case where the alleged act of defamation of the respondent has taken place only at Jaipur where during the course of arguments certain allegations were levelled against the respondent by the counsel for the petitioner. The alleged defamatory arguments were not publicized at any place in Srinagar. Therefore, the observation of the learned Trial Magistrate that the said Court has jurisdiction in view of provisions contained in Section 179 of the Cr. P. C to try the case is not sustainable in law.

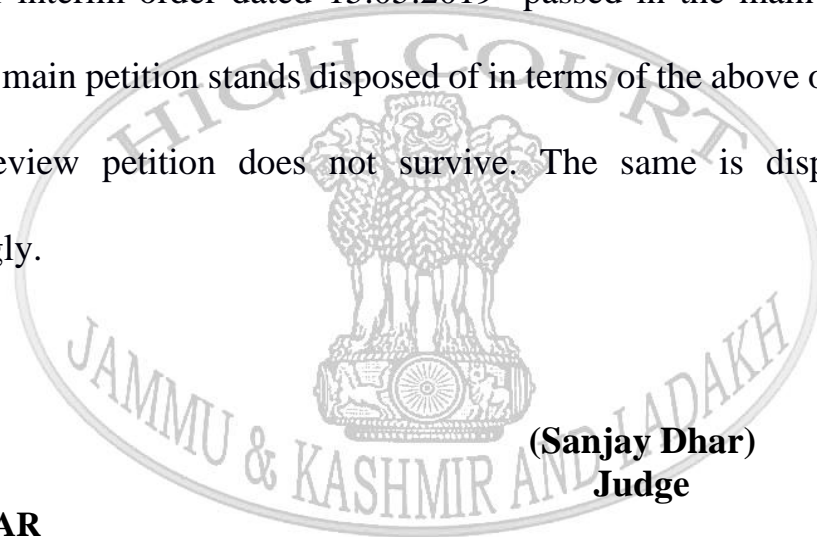
19) In view of what has been discussed hereinabove, it is clear that neither the act of alleged defamation has taken place within the local limits of the Courts at Srinagar nor its consequences have ensued within the local limits of the Trial Magistrate at Srinagar. Since the petitioner is not a permanent resident of the erstwhile State of Jammu and Kashmir, as such, even the provisions contained in Section 4 of the RPC and Section 188 of the J&K Cr. P. C would not get attracted to the present case so as to subject him to prosecution at Srinagar. The petitioner is a resident of Rajasthan and he is alleged to have committed offence of criminal defamation beyond the limits of erstwhile State of Jammu and Kashmir, as such, he cannot be prosecuted at Srinagar in the instant case. The trial Magistrate has, therefore, erred in entertaining the impugned complaint.

20) For the foregoing reasons, the petition is allowed and the impugned order dated 23.06.2016 passed by the Chief Judicial Magistrate, Srinagar, is set aside. The learned Trial Magistrate is directed to return the complaint to the respondent/complainant for its presentation before the Court having jurisdiction.

21) Copy of this order be sent to the learned Chief Judicial Magistrate, Srinagar, for information and compliance.

RP No. 48/2019

22) Through the medium of this petition, the respondent is seeking review of interim order dated 15.05.2019 passed in the main petition. Since the main petition stands disposed of in terms of the above order, the instant review petition does not survive. The same is disposed of accordingly.



(Sanjay Dhar)
Judge

SRINAGAR

20.07.2024

“Bhat Altaf-Secy”

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No