

(2001) 11 P&H CK 0148

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 1306-M of 1992

Harcharan Singh

APPELLANT

Vs

Hari Singh

RESPONDENT

Date of Decision: Nov. 19, 2001

Acts Referred:

- Penal Code, 1860 (IPC) - Section 211, 500

Citation: (2001) 2 CriminalCC 75 : (2002) 1 RCR(Criminal) 393

Hon'ble Judges: R.C. Kathuria, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.C. Kathuria, J.

The petitioner seeks quashing of the order dated 10.8.1991 passed by the Additional Sessions Judge, Chandigarh upholding the order dated 11.3.1991 passed by the Judicial Magistrate, 1st Class, Chandigarh dismissing the complaint filed by the petitioner against the respondents-accused under Sections 211 and 500 of the Indian Penal Code.

2. Harcharan Singh - complainant was employed as a Clerk in the office of the Director Food and Supplies, Haryana, Chandigarh. His relations have been residing in village Devi Nagar where Hari Singh and Tarlok Singh respondents -accused also resided. He has been visiting his relations in village Devi Nagar. The visit of the complainant to his relations was not liked by the accused as they were inimical towards them. On this account both the accused bore a grudge against the complainant and for that reason they had been making false complaints against him and his relations.

3. One of the complaints was made by the accused in the year 1984 to the Managing Director, Water Supply and Sewerage Board, Punjab, Chandigarh. Another complaint dated 2.1.1986 was made by accused No.2 to the Director, Food and

Supplies, Punjab, Chandigarh and Managing Director, Water Supply and Sewerage Board, Sector 17, Chandigarh. Tarlok Singh made complaint dated 23.11.1987 to the Secretary to Government to Haryana, Department of Vigilance, Chandigarh and in respect of the allegations made therein an enquiry was made by the vigilance Department but the complaint was found to be baseless. This did not deter the accused and in connivance with each other they made another complaint to the Secretary to the Government of Haryana, Vigilance Department, Chandigarh and again on 18.1.1988 to the Chief Minister, Haryana, Chandigarh. The substance of the allegations made against the complainant was that he had purchased land and has not sent an intimation in this respect to the department. The above stated false complaints made by the accused had lowered his prestige and status in the eyes of his colleagues in the department, friends, relatives and co-villagers. On the basis of these allegations, the complainant prayed that the accused be prosecuted under Sections 211 and 500 I.P.C.

4. Harcharan Singh, complainant supported the facts stated in the complaint when he appeared as CW-7/A. In addition, he examined Ashwani Kumar (CW-1), Avtar Singh (CE-2), Bhupinder Malhotra (C W-3), Shiv Shanker (CW-4), Dinesh Sharma (CW-5), Labh Singh (CW-6) and Anita (CW-7) in the preliminary evidence.

5. Ashwani Kumar (CW-2) is a witness of record as he proved the photostat copies of the complaints Exs.P/1 to P/2. Avtar Singh is the official of the Food and Supplies Department, who proved copy of the complaint Ex. P.3. Bhupinder Malhotra had also produced copy of Enquiry Report Ex. CW-3/A and copies of the complaints and letters Exs. CW-3/B to CW-3/F. Shiv Shankar had proved the copies of the complaints dated 23.11.1987 and 18.1.1988 Exs.PW-4/1 and PW-4/2. Dinesh Sharma had maintained that he had good relations with the complainant earlier but because of the enquiry made by the Vigilance Department, he had severed his connection with him. Labh Singh in his deposition had testified about the complaints made and enquiry made in respect of these complaints. He further stated that because of the complaints made the other employees had lost confidence in him. Anita had produced photostat copies of the complaints Exs.PW-6/A to PW-6/C.

6. The learned Magistrate taking into account the evidence adduced by the complainant came to the conclusion that element of publication of the written complaint is lacking in this case and merely because enquiry had been made by the Vigilance Department with regard to the allegations made against him would not, in any manner, attract the provisions of Section 500 I.P.C. The trial Magistrate also took into account the fact that civil and criminal litigation was also pending between the parties and that the complainant had misused the process of law by seeking to summon the accused in this case. Finding that no sufficient ground had been made out by the complainant, the complaint was dismissed. In revision, the learned Additional Sessions Judge, Chandigarh, while upholding the order dated 11.3.1991 of the learned Judicial Magistrate, observed that where the Vigilance Department of

Haryana finds the allegations baseless, it is for the Vigilance Department to initiate the proceedings u/s 182 I.P.C. because no publication of allegations would arise with regard to the allegations made in the complaint and the statement made during the course of enquiry. Consequently the revision was dismissed.

7. Despite service of notice on counsel for the parties, they have not put in appearance.

8. The main ground taken in the petition seeking quashing of the impugned orders is that the respondents by tending the complaints to various authorities noticed above had published false allegations levelled against the petitioner which led to initiation of enquiry. The assertion that the allegations were false is supported by the fact that during the enquiry the allegations were not substantiated. The action of the accused has not only caused mental torture to the petitioner but has also lowered his esteem among the colleagues, friends and relatives and the evidence in support thereof examined by him in preliminary evidence before the Court of Judicial Magistrate, 1st Class have not been given due consideration by the Courts below. It cannot be denied that Tarlok Singh accused No.2 had addressed the complaints to the Director, Food and Supplies, Punjab, Chandigarh and the Managing Director, Water Supply and Sewerage Board, Punjab, Chandigarh. Another complaint dated 23.1.1987 was addressed by him to the Secretary to the Government of Haryana, Department of Vigilance, Chandigarh which was followed by another complaint made by him on 18.1.1988 to the Chief Minister, Haryana, Chandigarh. The fact remains that core issue to be decided is whether sending of these complaints to the above mentioned authorities amounts to defamation and can be construed as publication within the ambit of Section 500 I.P.C. The word "defamation" has been defined in Section 499 I.P.C which lays down as under :-
"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 persons."

From the aforesaid provisions, necessary ingredients which are discernible are as under :-

- (i) Making or publishing any imputation concerning any person;
- (ii) such imputation must have been made by :-
 - (a) words either spoken or intended to be read; or
 - (b) signs; or
 - (c) visible representation.

(iii) Such imputation must have been made with intention of harming or knowing or having reason to believe that such imputation will be harming the reputation of the person concerned to whom it is made.

9. The above requirements of the section leave no manner of doubt that intention to cause harm is the very foundation of the offence u/s 499 I.P.C. The manifestation of the intention has to be gathered from the accusation made in the communication to an authority as to whether they intend to lower the petitioner in the estimation of others. Such a situation arises when the imputations are made public. Otherwise the maker of the imputations without publication would not be liable under this Section. In this case the sole purpose of making complaints by the accused to the authorities referred to above was to bring to their notice the factual position which they had gathered in good faith about the petitioner. It was not made public and rather, it was left to the authorities concerned to take into account the allegations made for appropriate action in the matter. Therefore, from the evidence and documents on record, it cannot be said that accused intended to publish the contents of the letter to other persons as sought to be projected by the complainant himself and the other witnesses examined. Thus, no fault can be found with the orders of the Courts below in dismissing the complaint.

10. For the aforesaid reasons, there is no merit in the petition and the same is accordingly dismissed.