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**(2003) 02 GAU CK 0004**

**Gauhati High Court**

**Case No:** Criminal Revision No. 218 of 2001 and Criminal Revision (P) No. 495 of 2001

Anjana Saikia (Das)

APPELLANT

Vs

Anuradha Das and Another

RESPONDENT

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**Date of Decision:** Feb. 25, 2003

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 397
- Penal Code, 1860 (IPC) - Section 499

**Citation:** (2004) 1 DMC 38 : (2003) 2 GLR 565

**Hon'ble Judges:** P.G. Agarwal, J

**Bench:** Single Bench

**Advocate:** K. Agarwal, D.K. Chomal and R.J. Baruah, for the Appellant; A.K. Bhattacharjee, P.C. Borpujari, B.B. Deb and A.K. Choudhury, for the Respondent

**Final Decision:** Allowed

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**Judgement**

P.G. Agarwal, J.

The above revision petitions are being disposed of by this common order as common question of law and facts are involved.

2. Heard Mr. A.K. Bhattacharjee, learned Sr. Advocate and Mr. P.C. Barpujari for the respondents and Mr. K. Agarwal, learned counsel for the petitioner.

3. The facts - the revision petitioner before us, Smt. Anjana Saikia Das, hereinafter referred to as the petitioner for the purpose of convenience, filed an FIR at Tinsukia P.S. on 16.5.2000 stating, inter alia, that on 15.5.2000 at about 4-00 PM, the petitioner found her husband Kamal Das in compromising position with her sister in law Smt. Anuradha Das and when she protested she was assaulted and kept confined. She reported the matter to her mother, whereupon she was rescued. Tinsukia P. S. Case No. 176/2000 u/s 498A IPC was registered. It may be mentioned that for the said incident of 15.5.2000 another FIR was filed by the opposite party alleging commission of certain offence by the petitioner and another Tinsukia P. S.

Case was registered. Both the cases were investigated and it was submitted at the bar that in the meantime the investigation is over and the police has submitted charge-sheet in both the cases.

4. The respondent Kamal Chandra Das, husband of the petitioner Anjana Das thereafter tiled a complaint being Case No. 45C/2001 stating, inter alia, that the allegation made by the petitioner in the FIR are defamatory and, as such, the petitioner has committed the offence of defamation. An enquiry u/s 202 Cr.PC was conducted and thereafter the learned Addl. Chief Judicial Magistrate, Tinsukia took cognisance of the offence and issued processes vide order dated 31.7.2001.

5. The other accused Anuradha Das also filed a separate complaint alleging defamation on the above facts and this was registered as a Complaint Case No. 410C/2000 and the Addl. Chief Judicial Magistrate also took cognisance of the offence and issued process against the petitioner u/s 500 IPC.

6. In these two revision before us, the petitioner has prayed for quashing of the complaint in the two complaint cases, namely, Case No. 45C/ 2001 and Case No. 410C/2000.

7. The case of the petitioner is that the statement/acquisition made in the FIR dated 16.5.2000 are true and those are made bona fide and in good faith to protect the interest of the petitioner. Those are also made to police, who is the lawful authority to investigate and prosecute the opposite party. The petitioner has also submitted that in view of the Exception 8 and 9 of Section 499 IPC, no case for defamation is made out. It is further submitted that the two complaints u/s 500 IPC have been filed by the complainant to harass and pressurise her not to proceed with the FIR filed by her and it amounts to abuse of the process of the Court. Further, both the complaint petition are pre-matured as because the truth/falsity of the acquisition made in the FIR have not been established in the Court where the matter is still pending. Learned counsel for the petitioner has placed reliance on a decision of this Court in Criminal Revision No. 604/94 (Mahendra Nath Sarma v. Narayan Chakrabarty), the facts of the above case are more or less identical and this Court held that the complaint is pre-matured and it amounts to abuse of the process of the Court. The said complaint was accordingly quashed with a liberty to the complainant to approach the Court again after the Criminal Case is disposed of by the Court.

8. Sri A.K. Bhattacharjee, learned Sr. Advocate for the respondent was fair enough to submit that he has got no serious objection if the proceeding in two complaint cases are stayed for the time being or till the disposal of the case in respect of the FIR filed by the petitioner. Learned counsel, however, submitted that no case for quashing of the complaint is made out as the matter does not come under any of the guidelines laid down by the Supreme Court as regards the quashing of the complaint. It is also submitted that the question of applicability of Exception 8 and 9 of Section 499 IPC

can be gone into at the stage of trial only.

9. The broad facts as stated above are not in dispute. Shri Bhattacharjee has placed reliance on the observation of the Apex Court in the case of [Balraj Khanna and Others Vs. Moti Ram](#), wherein the Apex Court held :

"It is needless to state that the question of applicability of the Exception to Section 499 IPC as well as all other defences that may be available to the appellants will have to be gone into during the trial of the complaint."

10. A similar view was taken by the Apex Court in the case of [M.N. Damani Vs. S.K. Sinha and Others](#), Sri Agarwal, on the other hand, has placed reliance on the observation of the Apex Court in the case of [Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another](#), The Apex Court held :

"The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence u/s 500 or not Section 499 of the Indian Penal Code defines the offence of defamation and Section 500 provides the punishment for such offence. Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject matter of accusation. The report of the Treasury Officer clearly indicates that pursuant to the report made by the accused persons against the complainant, a departmental enquiry had been initiated and the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more would be covered by Exception 8 to Section 499 of the Indian Penal Code. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. On the other hand, in our considered opinion, that is a fit case for quashing the order of issuance of process and the proceedings itself. We, therefore, set aside the impugned order of the High Court and confirm the order of the learned Sessions Judge and quash the criminal proceeding itself. This appeal is allowed."

11. Shri Bhattacharjee has further submitted that the question of "good faith" is a question of fact and as such it cannot be decided by the revisional court before the commencement of the trial. He has referred to the observation of the Apex Court in the case of Harbhajan Singh v. State of Punjab AIR 1960 SC 97 the petitioner, on the other hand, submits that the question of good faith is not involved in this case as the petitioner was an eye witness to the incident and she has merely stated the same in FIR filed by her. The petitioner never acted on any reported or hearsay

evidence or on the basis of purported statement of some other person.

12. Upon hearing the submission of the learned counsel for both sides, this Court is of the view that there cannot be any complete restriction with the question of applicability that the Exception 8 and 9 cannot be gone into at the preliminary stage, that is, either at the time of issuing process or in revision proceeding and the matter would have to be thrashed out during the trial only. The matter will vary from case to case depending upon the facts involved. There may be cases where a bare perusal of the complaint petition will show the applicability of Exceptions u/s 499 IPC. Exception 8 and 9 of Section 499 starts with the words "it is not defamation". There may however be cases where recording of evidence will be considered as a must to examine the applicability of the Exception 8 and 9 of Section 499 IPC. However, the above matter need not detain us in view of the order proposed to be passed.

13. In the case of [R.P. Kapur Vs. The State of Punjab](#), the Apex Court laid down three guidelines for exercising power of quashing.

"Some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are :

(I) where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(II) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged ; in such cases no question of appreciating evidence arises ; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not.

(III) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced dearly or manifestly falls to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and dearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question."

14. Subsequently, in the case of [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), the Apex Court held :

"In the following categories of cases, the High Court may in exercise of powers under Article 226 or u/s 482 of Cr.PC may interfere in proceedings relating to cognisable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, power should be exercised sparingly and that

too in the rarest of rare cases.

(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 cognisable offence, justifying an investigation by police officers u/s 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-cognisable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 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 recress 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 or the accused and with a view to spite him due to private and personal grudge."

15. The question whether the accusations made by the petitioner in the FIR dated 16.5.2000 will amount to defamation will admittedly depend upon the findings of the Court deciding the fate of the said FIR. As submitted above, the police have already submitted charge-sheet and the matter is pending. Hence, at this stage if we allow the defamation proceeding to continue simultaneously it would amount to unwarranted prosecution. In case the accusations are found to be true by the competent court, there will be no scope claim defamation. We find sufficient force in the submission that the defamation proceeding have been instituted with ulterior motive for raking vengeance or to pressurise the petitioner. We find, that in the alleged incident of 15.5.2000 there are two cross cases, which shall be decided by the Courts below in accordance with law. In each and every case, where adultery is alleged or even rape is alleged by a woman and the accused is allowed to proceed with a defamation case, in my opinion, the same will amount to abuse of the process

of the Court as each and every victim or rape or aggrieved person in a case of adultery will be unnecessarily harassed. This may be the reason for the submission that the proceeding may be stayed till the disposal of the criminal cases. However, the question that disturbs us is whether the sword of prosecution be kept hanging on the petitioner's head for all time to come? That cannot be the spirit of law that whenever a person makes an accusation before the competent lawful authority alleged commission of the criminal offence, it will be simultaneously subjected to defamation proceeding. There is no dispute that in case of false accusations, the aggrieved person shall have the liberty to seek relief for defamation, any.

16. Shri Bhattacharjee has also submitted that if the respondents had not filed the complaint on time or if they were asked to file complaint subsequently, the question of limitation will be applicable and the complaint may be barred by limitation as the offence u/s 500 IPC is punishable upto two years imprisonment and, as such, in view of the provision contained in Section 468(2)(C) of the Cr.PC the period of limitation is 3 years. Learned counsel has referred to the decision of the Apex Court in the case of [Surinder Mohan Vikal Vs. Ascharaj Lal Chopra](#), the Apex Court held that the limitation shall commence from the date on which the accusation has been made and not from the date of acquittal in the criminal case. It is also submitted that the period of limitation cannot be extended by the Court even, I do not find much force in the above submission in view of the provisions of Section 473 Cr.PC which reads as follows :

"Extension of period of limitation in certain cases. - Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognisance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."

17. In view of what has been stated above, we hold that the prosecution of the petitioner in complaint Case No. 45C/2001 and complaint Case No. 410C/2000 pending in the Court of the Additional Chief Judicial Magistrate, Tinsukia cannot be allowed to proceed. Both the proceedings are hereby quashed. It is further provided that on conclusion of the trial in respect of the FIR dated 16.5.2000, the respondent complainant will be at liberty to approach the Court in case there is a finding in their favour. The period of limitation shall stand extended in view of the provision of Section 473 Cr.PC. Both the revision petition stand allowed.