

(2008) 07 DEL CK 0185

Delhi High Court**Case No:** Criminal M.C. 264, 265, 529, 1890 and 1891 of 2001

Dipika Lal and Another

APPELLANT

Vs

Vipin Kumar Gupta and Another

RESPONDENT

Date of Decision: July 25, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 294, 323, 34, 406, 427

Citation: (2008) 106 DRJ 266**Hon'ble Judges:** Dr. S. Muralidhar, J**Bench:** Single Bench**Advocate:** S.D. Salwan and Neeraj Chaudhary, for the Appellant;

Judgement

S. Muralidhar, J.

These petitions u/s 482 of the Code of Criminal Procedure 1973 ("CrPC") are between the same parties and raise common questions. Accordingly, they are being disposed of by this common judgment.

2. These petitions have been filed by the wife and father-in-law of the respondent No. 1 seeking quashing of five different complaint cases filed by him against them and certain others u/s 500 of the Indian Penal Code ("IPC") and which pending in the court of the learned Metropolitan Magistrate ("MM"), New Delhi against them.

3. Petitioner No. 1 was married to the respondent No. 1 on 14th February 1997. They have two children, a daughter Damini and a son Timmi. A twin born with Timmi expired 15 days after his birth.

4. Respondent No. 1 was working as a judicial officer in Delhi. By a notification dated 22nd January 1999 the Lieutenant Governor of Delhi terminated his services on the recommendation of this Court. Prior thereto, respondent No. 1 was placed under suspension and judicial work was withdrawn from him some time in November

1998.

5. According to the petitioner No. 1 she was subjected to cruelty by the respondent No. 1 and his family members soon after their marriage. He became even more violent in his actions after his dismissal from service. She left the matrimonial home on 25th December 1999. The petitioner No. 1 filed a complaint on 18th January 2000 alleging that the respondent No. 1 came to her residence, used abusive language, hurled stones and broke the window panes, and thereafter he ran away from there. A further complaint alleged that on 20th January 2000 respondent No. 1 made a telephonic call threatening to eliminate her and her father and take away the minor children. Further, on 6th February 2000 respondent No. 1 is said to have called petitioner No. 1 on telephone; used abusive language threatening her and her parents and the minor children. In regard to these incidents FIR No. 28/2000 under Sections 506/323/427 IPC at Police Station Sector 7, Faridabad, FIR No. 42/2000 at Police Station Sector 7, Faridabad under Sections 498-A/406/506/323 IPC and FIR No. 44/2000 at Police Station Sector 7, Faridabad under Sections 506/294/504/323 IPC were registered against respondent No. 1. It appears that these events resulted in further acrimony and led to respondent No. 1 filing a series of complaints against petitioner No. 1 and her father.

6. On 3rd July 2000 the respondent No. 1 filed a complaint case No. 193/1 in the court of the learned MM, Delhi against Shri Subhash, Reporter Dainik Punjab Kesari, (accused No. 1), Editor-in-Chief/Printer/Publisher, Danik Punjab Kesari (accused No. 2), City Editor/News Editor, Danik Punjab Kesari (accused No. 3), the petitioner No. 1 Dipika Lal (accused No. 4) and Dr. (Mrs.) Alok Deen, General Secretary, Haryana Mahila Sangathan, Faridabad (accused No. 5) alleging that a defamatory news item has been published in Dainik Punjab Kesari edition dated 30th March 2000 titled "Nayadish key khilaf dahej mangane wah pratarith karne ka mamla darj" (which roughly translates as "case registered against Judge for dowry and torture"). It was alleged that the news item was defamatory and had lowered the reputation of the complainant respondent No. 1 and therefore, the accused should be proceeded against for the offences under Sections 500/501/502/34 IPC. In support of this complaint, the complainant examined himself as CW-1, Shri Laxman Das Bhatia as CW-2 and Shri Gulshan Kumar Malhotra as CW-3. By an order dated 26th August 2000, after examining the complaint and the pre-summoning evidence, the learned MM passed an order recording his satisfaction that a prima facie case was made out against the accused Nos. 1 to 4 u/s 500/34 IPC. Accordingly, summons were sent to them to face trial. The petitioners have filed CrI M.C. No. 265 of 2001 seeking quashing of the said complaint and all proceedings consequent thereto.

7. On 30th September 2000 respondent No. 1 filed another complaint case in the court of the learned MM, Delhi where, apart from the Editor-in-Chief, City Editor, concerned Reporter/Correspondent of Punjab Kesari being arrayed as accused Nos. 1 to 3, the petitioner No. 1 was arrayed as accused No. 4 and her father Brig. (Retd.)

J.M. Lal (petitioner No. 2) was arrayed as accused No. 5. The allegation in the complaint was that the accused Nos. 1 to 3 had published defamatory news item in the newspaper Punjab Kesari Delhi edition on 4th September 2000 titled "Barkhast magistrate patni par hatyachar karne key aarop mai girfttar" (which roughly translates as "Dismissed magistrate arrested for torturing his wife"). In support of this complaint, the complainant examined himself as CW-1, Shri Pyare Lai, CW-2. By an order dated 5th December 2000 the learned MM summoned the accused persons including the petitioners here for the offence u/s 500/501/502 read with Section 34 IPC after taking cognizance of the said offence. Aggrieved by the said complaint and all proceedings consequent thereto, the petitioners have filed Crl M.C. No. 264 of 2001 in this Court.

8. Respondent No. 1 filed on 30th September 2000 a complaint case in the court of the learned MM, Delhi in respect of the news item published in the Punjab Kesari Delhi Edition on 6th September 2000 titled "Purv mahanagar dandadhikari do din key police remand par" (which roughly translates as "Ex-Metropolitan Magistrate sent to two days" police remand"). This complaint was registered as Case No. 110/1. The complainant examined himself as CW-1, Shri Pyare Lai, CW-2 and Shri Narinder Singh, CW-3. By an order dated 5th December 2000 the learned MM held that & prima facie case for an offence punishable u/s 500/501/502 read with Section 34 IPC was made out. Accordingly, after taking cognizance of the said offence, the learned MM summoned the accused persons. Seeking the quashing of the aforementioned complaint and all proceedings consequent thereto, the petitioners have filed Crl M.C. No. 529 of 2001.

9. Respondent No. 1 filed a complaint case No. 130/1 on 18th July 2000 in the court of the learned MM, Delhi against Shir CD. Verma, Reporter/Correspondent, Hindustan Times, Editor-in-Chief, Hindustan Times, Mrs. Bhula Devi, City Editor, Hindustan Times, the petitioner No. 1 and her father as accused Nos. 1 to 5 respectively in respect of news item published in the Hindustan Times New Delhi Edition dated 31st March 2000 titled "Dowry harassment case filed against ex-Delhi magistrate." The complainant examined Shri Rakesh Sisodia, CW-1, Shri Gautam Mann, CW-2 and the complainant as CW-3. By an order dated 8th January 2001 the learned MM summoned the accused Nos. 1, 4 and 5 u/s 500/34 IPC and accused Nos. 2 and 3 u/s 501/34. The petitioners have filed Crl M.C. No. 1890 of 2001 seeking quashing of the complaint and all the proceedings consequent thereto.

10. On 20th July 2000 Respondent No. 1 filed complaint case No. 316/1 in the court of the learned MM, Delhi against the Editor-in-Chief, City Editor, Reporter, the petitioner Nos. 1 and 2 being arrayed as accused Nos. 1 to 5 respectively u/s 500/501/502/34 IPC in respect of the news titled "Dahej pratarna key aaropi barakhast metropolitan magistrate samet char ki jamanat kharij" (which roughly translates as "Bail plea of dismissed Metropolitan Magistrate and four other accused in a dowry case rejected"). In this complaint the complainant examined himself as

CW-1, Shri Shakti Chand Sharma, CW-2, Shri Devki Nandan, CW-3 and Shri G.K. Tiwari, CW-4. By an order dated 20th January 2001 the learned MM formed an opinion that a prima facie case was made out against accused Nos. 1,2 and 3 u/s 502 IPC and all the accused u/s 500 IPC and accordingly summoned them. The petitioners have filed CrI M.C. No. 1891 of 2001 seeking quashing of the complaint and all proceedings consequent thereto.

11. The role attributed to the petitioners herein (i.e. the wife and the father-in-law of respondent No. 1) in each of the above five complaints is more or less similar. The allegation is that the publication of news concerning the above litigation was got done by petitioner No. 1 and her father with the connivance of the journalists and editors of each of the newspapers and they thereby defamed and lowered the reputation of respondent No. 1. In each of the complaints, the respondent No. 1 has examined himself and certain other witnesses as part of the pre-summoning evidence.

12. The case of the petitioners is that they were not responsible for the publication of the news items. In any event the news items were only a reproduction of what transpired in the court. None of the news items refer to any press conference held by the petitioners or describe them as the source. It is submitted that by filing the aforementioned false criminal complaints, respondent No. 1 has acted malafide to victimize and harass the petitioners to seek vengeance for the cases instituted by them against him. It is submitted that these proceedings are an abuse of the process of law. It is accordingly prayed that this Court should, in exercise of its powers u/s 482 CrPC and in the ends of justice, quash the complaints filed by respondent No. 1 against the petitioners.

13. Respondent No. 1 who appeared in person first submitted that these petitions are not supported by an affidavit of petitioner No. 2 but only that of petitioner No. 1 and therefore these petitions at his instance were not maintainable. Secondly, the petitioners are guilty of suppression of material facts and therefore, they should not be permitted to challenge the summoning order. Thirdly, it is submitted that the petitioners have an efficacious alternative remedy by way of a revision petition before the learned Additional Sessions Judge. Fourthly, it is submitted that the proceedings before the learned MM could be challenged only if the petitioners had appeared before the learned MM, which they have not till date. Referring to the pre-summoning evidence in each of the cases, it is submitted that it cannot be said that not even a prima facie is made out against the petitioners. Finally, it is submitted that in any event the defence of the petitioners can be examined only at the trial and therefore, it did not call for interference at this stage. Respondent No. 1 referred to a large number of decisions in support of his plea that the powers u/s 482 CrPC ought not to be exercised in case like the present one and that the matter should go in fact to the trial. Given the fact that this is too well settled a proposition, this Court does not propose to discuss these decisions.

14. This Court proposes to first examine the last two submissions made by Respondent No. 1 on merits since that is the real issue that requires to be decided. Accordingly, it is not expressing any opinion on the several objections raised by him to the maintainability of the petitions.

15. At the outset, it requires to be noted that the publisher, the editor and the concerned reporter of each of the newspapers, who have been arraigned as accused, have not come forward to seek quashing of the proceedings. Therefore, their possible defence that each news item is a true account of what transpired during the proceedings in the Court need not be examined at the present stage. In any event, in view of the law as explained by the Supreme Court in *Balraj Khanna v. Moti Ram* 1071 ♦CC (CM) 647 and [Sewakram Sobhani Vs. R.K. Karanjia Chief Editor, Weekly Blitz and Others](#), this would require the cases having to go to trial and evidence having to be led.

16. As far as the petitioners are concerned, the question that arises is whether & prima facie case can be said to have been made out against them on reading the complaints as a whole. The other question is whether the proceedings are liable to be quashed on the-ground that they are vexatious and an abuse of the process of law.

17. Each of the complaints is more or less similarly worded. They set out the complainant's (Respondent No. 1) version of the events following the marriage between the parties. It is alleged that criminal complaints filed against him were false and were registered in connivance with the police. It is then alleged that the Petitioners herein disseminated false and misleading information to the press and got published each of the offending news items which are described as "defamatory per se" and as having lowered the well established esteemed, reputation and respect of the complainant in the estimation of his relatives, friends, known people and public as a whole.

18. In addition, in support of each of the complaints the complainant has examined himself and other witnesses as part of the pre-summoning evidence. Some of these witnesses have merely made specific allegations. For instance, Shri Pyare Lal who was examined as a complainant's witness (CW) in the complaint filed by the Respondent No. 1 on 30th September 2000 in respect of the news item published in Punjab Kesari, Delhi Edition dated 4th September 2000 states:

The complainant commands a great respect amongst his friends, because he is very docile, soft spoken and helpful. On 28.9.2000, I telephonically informed the complainant that the accused No. 4 and accused No. 5 had come to his house on 28.9.2000 at about 9.00 pm and had given me two newspapers i.e. Punjab Kesari dated 4.9.2000 and 6.9.2000 and proudly claimed that they had got published, the news items concerning the complainant. They also told that they would continue to get defamatory news items published in various newspapers, till the complainant

gives up his demand for custody of male child.

19. Shri G.K. Tiwari who was examined as CW-4 in complaint filed on 20th July 2000 in respect of the news item in Dainik Jagran dated 6th April 2000 states "in middle July 2000 Mr. Brig Lai, father-in-law of the complainant met me in Patiala House Courts and gave me photocopy of an FIR No. 42 registered at Sector 7 Faridabad and asked me to read the FIR and see the conduct of your colleague and asked me to read the newspaper "Dainik Jagran" dated 6th April 2000."

20. Although it was urged by learned Counsel for the petitioners that the above statements are wholly improbable and unbelievable, it is not possible for this Court at the present stage to form an opinion in that regard. These witnesses are yet to be cross-examined. Moreover, the evidence will have to be weighed by the trial court along with other evidence that may emerge during trial in order to form an opinion whether the petitioners were themselves involved in the publication of the news items and whether they are defamatory as alleged. It is not possible for this Court to sift the pre-summoning evidence in each of the cases at the present stage. Examining the complaints and the evidence as a whole, it cannot be said that not even a prima facie case is made out for summoning the petitioners for the offence u/s 500 IPC.

21. As regards the contention that the proceedings are required to be quashed on the ground (as delineated in *State of Haryana v. Bhajan Lal* 1992 Suppl 1 SCC 335) that the proceedings are "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," this Court finds that there are numerous cases filed by the one party and the other which are pending in different courts. Given the background of the litigation and the allegations made by one party against the other, it is not possible to come to a definite conclusion that these proceedings can be quashed on the ground as urged hereinabove. That too would involve appreciation of evidence which the present proceedings u/s 482 CrPC plainly do not permit.

22. At various stages of the hearing of the present petitions this Court requested the parties to explore the possibility of a settlement. It is unfortunate that despite best efforts, the parties were unable to arrive at any workable settlement. It is apparent that the long years of litigation has hardened the respective stands of the parties. This is precluding them from seeing reason. Considering the fact that their troubled marriage is adversely impacting their lives as well as of their young children, this Court expresses the hope that even now the parties should consider settling their differences and putting an end to this acrimonious and time consuming litigation.

23. For the aforementioned reasons, these petitions and the pending applications are dismissed. The orders granting interim stay of the proceedings in the trial court stand vacated.

24. A certified copy of this order, will be placed on the file of each of the cases listed hereinabove. Another certified copy shall be delivered to the concerned MM together records of each of the cases within five days from today.

25. The parties are directed to appear before the concerned learned MM on 11th August 2008 at 10.30 am for further proceedings. The application if any of the petitioners for exemption from personal appearance will be dealt with by the learned MM on merits.