

Ajit Singh And Ors vs Raj Daluja on 12 April, 2022

Author: Javed Iqbal Wani

Bench: Javed Iqbal Wani

1

S. No. 10

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
Through Virtual Mode

CRMC No. 591/2015
IA No. 01/2015

Reserved on: 30.03.2022
Pronounced on: 12.04.2022

Ajit Singh and Ors.

...Petitioner(s)

Through: Mr Shamas ud Din Shaaz, Advocate.
Vs.

Raj Daluja

...Respondent(s)

Through: Mr Suneel Malhotra, GA.

CORAM: HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE
JUDGEMENT

1. Inherent jurisdiction of this Court under Section 561-A (Section 482 Cr.PC) is being invoked by the petitioners seeking quashment of complaint (for short impugned complaint) filed by respondent herein under Section 500 RPC along with subsequent proceedings including order dated 23.11.2015 (for short the impugned order) pending before the court of Special Municipal Mobile Magistrate, Jammu (for short the court below).

2. The impugned complaint is stated to have been instituted by the respondent herein before the court below stating therein that the complainant/respondent herein is a respectable citizen of the State, an educationist and philanthropist owning a daily circulated newspaper namely "State Times". Brother of the complainant/respondent herein is stated to be an Industrialist owning a unit of Water Purifier Treatment Plant situated at Murallian Bisnah, Jammu, with brand name

Fit-n-Fine duly certified by I.S.A.

3. The complainant/respondent herein is stated to have contended in the complaint that the accused persons/petitioners herein got a report published in Excelsior newspaper that a team on 21.11.2015 raided Fit-n-Fine, Water Purifier Treatment Plant and Aloe vera, suspended its licenses and closed both factories, with a criminal intention indicating the name of the complainant/respondent herein with his full particulars, harming his reputation in the society and amongst the friends and relatives particularly knowing the fact that the complainant/respondent herein had nothing to do with the business of his brother.

4. It is stated that the complainant herein alleged in the complaint that by getting the report published in the newspaper-daily Excelsior, the accused persons/petitioners herein caused damage to the name of the complainant/respondent herein being enjoyed by him in the society at large and amongst his friends in particular. The said act of the accused persons/petitioners herein is alleged to have been committed by them not in discharging their official duty.

5. Upon presentation of the complaint before the court below, it is stated in the petition that cognizance was taken and the accused persons came to be summoned by the court below in terms of the impugned order dated 23.11.2015 after recording the statements of the complainant and one of his witnesses.

6. The maintainability of the complaint in as much as taking cognizance thereof including issuance of process against the accused persons/petitioners herein by the court below is being impugned in the instant petition inter-alia amongst others on the grounds that the petitioners herein are public servants, as such, are entitled to the protection of prior sanction for prosecution envisaged under Section 197 CrPC.

7. It is urged in the grounds that the petitioner have performed their lawful duties while conducting inspection of the business concern of the brothers of the respondent herein as also one of their partnership concern namely M/s Aloe Vera International wherein the respondent herein is stated to be a 50% partner with his brother and that the duties discharged by the petitioners herein are under and in terms of the Section 88 of the Food Safety and Standards Act, 2006, as also under Section 37 of the Drugs and Cosmetics Act, 1940, actions taken in good faith.

8. It is further urged in the grounds that averments made in the complaint are false and do not constitute any offence against the petitioners herein as newspaper wherein alleged news items has been published against the complainant respondent herein had been published through its own correspondent and that, as such, its editor and correspondent have not been arrayed as accused persons in the complaint.

9. It is next urged in the grounds that court below upon entertaining the impugned complaint has failed to record its satisfaction before taking cognizance and issuing process against the petitioners herein.

10. Per contra, objections have been filed by the respondent herein wherein it is averred that the petition is not maintainable and that the court below upon entertaining the complaint took cognizance and issued process only after recording his satisfaction legally and validly.

11. It is further averred in the objections that petitioners have admitted in para 5 of the petition that after taking action, matter was reported by them in daily Excelsior on 21.11.2015 and that in the said newspaper report the name of the petitioner was mentioned as brother of Raj Kumar Daluja (owner of State Times) intentionally therein in order to tarnish the image of the respondent in the estimation of public.

12. It is next averred in the objections that no prior sanction was required for prosecution of the petitioners herein in terms of Section 197 as the publication of defamatory material by the petitioners herein relating to the complainant/respondent herein does not come within the protection of Section 197 CrPC. The petition thus, is contended to be misconceived and liable to be dismissed not being a case for exercise of inherent jurisdiction of this court.

Heard learned counsel for the parties and perused the record.

13. The fundamental moot question that begs consideration of this court is as to whether the exercise of inherent jurisdiction is warranted in the facts and circumstances of the case for quashment of the impugned complaint, proceedings initiated thereupon, as also the order impugned dated 23.11.2015.

14. Before advertng to the aforesaid questions, it would be imperative to refer to Section 197 CrPC which is in extenso extracted and reproduced as under: -

[Section 197. Prosecution of Judges and public servants.

1) When any person who is Judge within the meaning of section 19 of the Ranbir Penal Code or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the State Government or the Government of India, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties, no Court shall take cognizance of such offence except with the previous sanction-

a) in the case of persons employed in connection with the affairs of the Union, of the Government of India; and

b) in the case of persons employed in connection with the affairs of the State, of the Government.

2) The Government of India or the State Government, as the case may be, may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be

conducted, and may specify the Court before which the trial is to be held.] A perusal of the Section supra would reveal that same is intended to provide a protection to a public servant against the vexatious or malicious proceedings, however, the said protection and privilege of amenity from prosecution without sanction extends only to the acts which can be shown to be in discharge of official duty.

In considering the question of application of Section 197 CrPC, the court has to find the allegations leveled in the complaint and can take into account all the material on record at the time when the question is raised and falls for consideration. The question of sanction can be decided on the allegations made in the complaint, taking into account the facts situated in a given case. It has to be reminded that sanction for taking cognizance and sanction for prosecution are two different and distinct things and sanction for taking cognizance cannot be equated with sanction for prosecution. Whether sanction is necessary or not, it is not every act of a public servant, but only such act as is purported to have been done by him/her in discharge of his/her official duties that requires sanction under Section 197. Whether the act, complained of in any particular case would require sanction or not, is essentially a question of fact.

15. Reverting back to the case in hand, the allegations leveled in the complaint against the petitioners herein is provided in Para 4 of the complaint which is extracted in extenso as under: -

4. That the Accused/respondents herein to defame the name of the complainant and thereby damage the reputation and respect got published the news item titled DFCO raids „Fit n Fine , Aloe Vera, suspends licenses, closes both factories with criminal intention deliberately dragged the name of the complainant herein with full particulars viz Raj Kumar Daluja (owner State Times English News Paper and R/o South Extension, Trikuta Nagar Jammu) with criminal intention to specify the person gave the complete particulars. The accused made the above said Press details/note published with imputations concerning the complainant herein with criminal intention to harm the reputation of the complainant in the society and amongst the friends and relatives particularly. The accused had the knowledge that the complainant has nothing to do with the business of Fit-n-Fine/business of his brother and without any reason or justification dragged the name of the complainant in the whole episode as published in various newspapers on 21 November 2015. The report as published in the newspaper is marked as Annexure-I. In response to the allegation supra leveled in the complaint, petitioners herein have stated in para 5 and ground (III) of the petition as under: -

5. That the action taken by petitioners herein was reported in Daily Excelsior through his correspondent on 21.11.2015. A copy of the news item as published in Daily Excelsior on 21.11.2015 is enclosed herewith as Annexure-F. (III). That the averments made in the complaint are prima facie false and do not constitute any offence against the petitioners herein as none of the petitioner is guilty of any defamation of the respondent. Even the newspaper has published the news item through its own correspondent. The relationship of respondent with his brother cannot be a ground

for defamation in law. On that score alone the complaint as well as all the subsequent proceedings are liable to be set aside and quashed.

16. Perusal of the aforesaid allegations contained in the complaint and response supra thereof tends to show that the accused petitioners herein have not specifically replied to the allegations leveled against them by the complaint respondent herein that they got the news items published in newspaper in question. The accused petitioners herein have instead contended that action taken by them was reported in daily Excelsior newspaper through their correspondent on 21.11.2015, as such, in the given facts and circumstances it may not be appropriate for this court in exercise of its inherent jurisdiction to determine the said question for adjudication as to whether the petitioners got the news item published or the correspondent of the newspaper got it published alone as it would require leading of evidence and could essentially be decided appropriately by the trial court, once accused petitioners herein raise the plea of protection under Section 197 before it, therefore, in this view of the matter the exercise of inherent jurisdiction for the quashment of the complaint on this ground is not warranted. The rest of grounds in this view of the matter would pale into insignificance.

However, in so far as the impugned order of cognizance and summoning is concerned, perusal of the same would reveal that the court below has overlooked the relevant principle of law laid down by the Apex court in case titled as "Pepsi Food Ltd and Another Vs. Special Judicial Magistrate and Others" reported in 1998 (5) SCC 749, wherein at para 28 following has been laid down:

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto.

He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

17. The impugned order prima-facie has been passed in a routine manner by the court below seemingly overlooking the aforesaid principle of law. The impugned order therefore is not sustainable.

18. Having regard to what has been observed, discussed and considered hereinabove, the instant petition is dismissed in so far as the impugned complaint is concerned, however, is allowed in so far as the impugned order is concerned. The impugned order accordingly shall stand set-aside. The

matter shall be re-considered and re-visited by the trial court afresh in accordance with law.

19. It is made clear that nothing hereinabove shall be construed to be expression of any opinion about the merits of the case.

20. Disposed of.

(JAVED IQBAL WANI) JUDGE SRINAGAR 12.04.2022 "Ishaq"

Whether the judgment is speaking:	Yes
Whether the judgment is reportable:	Yes