
(2001) 11 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 14162-M of 1993

S.M.Dhawan

APPELLANT

Vs

Faquir Chand

RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

Citation : (2002) 2 AICLR 85 : (2002) 1 CLR 442 : (2002) 1 RCR(Criminal) 599

Hon'ble Judges : H.S.Bedi, J

Advocate : Mr. R.S. Cheema, Senior Advocate with Ms. Ashima P. Mohindru, Advocate. None for Respondent, Advocates for appearing Parties

Judgement

H.S. Bedi, J.

1. The present petition under Section 482 of the Code of Criminal Procedure has been filed, challenging the order summoning the accusedpetitioners on a complaint filed under Sections 499/500/107/108/109 read with Section 34 of the Indian Penal Code. The facts given in the summoning order are as under :

"The complainant, Faquir Chand a resident of Abohar is said to be a businessman of the Town. He was also a member of the D.A.V. College Managing Committee. The students of the D.A.V. College, Abohar went on a tour of Bombay and Goa on 26.9.1992, in which amongst others, the two sons of the complainant were also members. The staff members, who accompanied the tour are the three accused, the present petitioners. As per the allegations of the complaint, the petitioners must drink while in Gao and flaunted female ladies and had then set photographs with them and in advantage spent nights with dancing girls and prostitutes. The son of the petitioner protested against the behaviour, on which the three accused shunted out him and sent him back home. On the return of the tour and the accused, the complainant met the Principal and complained as to about what had happened but he was apparently roughed up by the three accused and threatened with dire consequences. The nonpetitioneraccused, Bhim Sain, who was a close relative of the Editors of the two local News Papers called "Tasveer" and "Nirakshak" instigated the Editors of the said Newspapers, who were his

friends, to publish two defamatory articles in their Newspapers, appended as Annexures P3 and P4 published in 'Tasveer' and 'Nirakshak', respectively, in which it has been stated that Sudeep, the son of the complainant had been sent back on account of the fact that he was mentally upset on account of some family problems. It is also stated that several persons mentioned in paragraph 6 of the complaint visited the complainant and enquired as to the mental health of the son of the complainant after having read the newsitem. The complaint was accordingly filed and after leading preliminary evidence, the accused were summoned as already mentioned above to stand trial."

2. The present petition has been filed for quashing of the complaint as also the summoning order.

3. Mr. Cheema, the learned counsel appearing for the petitioners has argued that as per Exception 9 to Section 499 of the Indian Penal Code, an action taken in selfdefence in response to a serious allegation made by the complainant, cannot be said to amount to defamation. He has also argued that in similar situations, the Hon"ble Supreme Court had held in *Jawaharlal Darda and others v. Manoharrao Ganpatrao Kapsikar and another*, 1998(2) RCR(Cr.) 455 (SC) : 1998(4) Supreme Court Cases 112 , and *Rajindra Kumar Sitaram Pande and others v. Uttam and another*, 1999(1) RCR(Cr.) 801 (SC) : 1999 Supreme Court Cases (Cr.) 393 that in case the matter was covered by one of the specified Exceptions in Section 499, the court could quash the proceedings at the very initial stage. He has pointed out, as a matter of fact, that the so called defamatory articles had been published in response to earlier allegations made against the petitioner in the same very Newspapers.

4. I have examined the two allegedly defamatory articles (Ex.P3 and P4). It is clear from a reading thereof that they had been published in response to the scurrilous allegations made in 'Tasveer' and 'Nirakshak' (Exh.P5 and P 6), in which serious allegations of misconduct and moral turpitude had been levelled against the petitioners and it was suggested that their continuance in service of the D.A.V. College, Abohar as Teacher should be reconsidered. It can, therefore, be said that the matter would clearly fall within Exception 9 to Section 499 of the Indian Penal Code which reads as under :

"Imputation made in good faith by person for protection of his or other's interests It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good."

5. In the light of the judgment of the Supreme Court, it is evident that this present matter falls clearly within the Exception and that the allegations made in Annexure P3 and P4 were clearly in response to several allegations made against the petitioners in the two news items (Annexures P5 and P6). The petition is, therefore, allowed and the complaint as also the summoning order are accordingly quashed.