
(2012) 08 SHI CK 0100
In the High Court Of Himachal Pradesh
Case No : Criminal MMO No. 10 of 2012

Smt. Veena Sood through her G.P.A. Sh. Ramesh Chander
and Sh. Ramesh Chander

APPELLANT

Vs

Sh. Ramesh Kumar Sood

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 499, 500

Citation : (2012) 3 ShimLC 1430

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Advocate : Satyen Vaidya, for the Appellant; Y.P. Sood, Advocate and Mr. Romesh Verma, for the Respondent

Judgement

Kuldip Singh, Judge

1. The petitioners have assailed the summoning order dated 30.12.2009, notice of accusation dated 03.11.2011 and have prayed quashing of criminal complaint No. 245-2 of 2010/2009 pending in the Court of learned Chief Judicial Magistrate, Shimla. The facts, in brief, are that petitioners are wife and husband. The respondent has filed complaint u/s 500 IPC against the petitioners. It has been stated that respondent claims himself to have inherited estate of one Smt. Durga Devi alias Durgi on the basis of will dated 29.12.2005 of Smt. Durga Devi. The will is with respect to property comprised in Khasra Nos. 1342, 1382, 1383, 1384 and 1341, Mauza Kaithu-I, Tehsil and District Shimla.

2. The petitioner No. 1 claims herself to be the adopted daughter of Smt. Durga Devi and claims to the estate of Smt. Durga Devi by inheritance except the property excluded by will dated 29.12.2005. The petitioner No. 1 has already filed case No. 11/1 of 2008 against respondent which is pending adjudication in the Court of learned Civil Judge (Senior Division), Shimla. The written statement has been filed in the said suit.

3. The complaint, plaint and written statement in Civil Suit No. 11/1 of 2008 demonstrate that as per admitted version of the parties, Smt. Durga Devi was owner in possession of much more movable and immovable properties than reflected in the will dated 29.12.2005. The petitioner No. 1 has raised a bonafide dispute as to the inheritance of movable and immovable properties of late Smt. Durga Devi by filing suit.

4. The petitioner No. 1 has also filed an application before Secretary (Revenue) to the Government of Himachal Pradesh with a prayer to drop the mutation proceedings initiated by Assistant Collector Ist Grade (U), Shimla, on the basis of application filed by respondent or to stay such proceedings till the decision of the Civil Suit No. 11/1 of 2008.

5. The learned Civil Judge(Senior Division) in Civil Suit No. 11/1 of 2008 has granted interim injunction against the respondent vide order dated 22.04.2008 in C.M.A. No. 11/6 of 2008 restraining withdrawing any amount from the accounts of deceased Smt. Durga Devi and also from alienating the immovable property as left behind by Smt. Durga Devi.

6. The respondent in order to pressurize and harass the petitioners has filed complaint with the averments that the contents of the application submitted by petitioner No. 1 to the Secretary (Revenue) and pleadings of petitioner No. 1 in Civil Suit No. 11/1 of 2008 in the shape of plaint and replication are defamatory. The respondent has examined 11 witnesses including himself in preliminary evidence. The learned Judicial Magistrate Ist Class, Court No. VII, Shimla, took cognizance of the complaint and ordered issuance of process against the petitioners on 30.12.2009.

7. The petitioners challenged the order dated 30.12.2009 in Cr. MMO No. 125 of 2011, but in the meantime, notice of accusation was put to the petitioners by learned Chief Judicial Magistrate, Shimla, on 03.11.2011. In view of this development, Cr. MMO No. 125 of 2011 was disposed of by High Court on 14.12.2011.

8. The petitioners have assailed summoning order, notice of accusation and the complaint on the grounds that the petitioners have been summoned u/s 500 IPC in mechanical manner, without any legal material on record notice of accusation u/s 500 IPC has been put to the petitioners by learned Chief Judicial Magistrate. No witness of the respondent has stated that on reading the plaint etc. the reputation of the plaintiff has been lowered down in his estimation.

9. The Courts below have not appreciated that complaint filed by the respondent against the petitioners is nothing but an abuse of process of the law and a method to pressurize the petitioners to accede to illegal and unwarranted demands of respondent. The Courts below have not appreciated that the complaint filed is malafide. The petitioner No. 1 has every right to pursue her stand in the Court of law in accordance with law. The petitioner No. 2 has been dragged into litigation without any reasonable and probable cause.

10. The respondent has contested the petition by filing reply. It has been stated that respondent is the sole successor of the estate of Smt. Durga Devi on the basis of registered will dated 29.12.2005. Smt. Durga Devi has bequeathed her entire movable and immovable property in favour of respondent. The petitioners despite the knowledge of valid will of Smt. Durga Devi have been repeatedly setting up a false claim one after another against the respondent with the sole purpose to harass him and to usurp the estate of Smt. Durga Devi.

11. The filing of suit by petitioner No. 1 has not been denied. It has been denied that petitioner No. 1 is adopted daughter of Smt. Durga Devi. The suit filed by petitioner No. 1 is false. The petitioner No. 1 has inherited the estate of her natural father. In the education records, the petitioner No. 1 is recorded as daughter of Amar Nath Sood. The petitioner No. 1 has not placed on record any adoption deed.

12. The petitioner No. 1 has not raised bonafide dispute. She has raised the dispute with the intention to harass the respondent by dragging him in unnecessary litigation. The petitioner No. 1 had filed application before Secretary (Revenue) to the Government of Himachal Pradesh to drop the mutation proceedings. The said application was also not bonafide. The petitioner No. 1 did not raise any grievance at the time of attestation of mutation of estate of Smt. Durga Devi. The petitioner No. 1 has made false allegations against respondent as if respondent is illegally grabbing the property of Smt. Durga Devi.

13. The Secretary (Revenue) to the Government of Himachal Pradesh after the application of petitioner No. 1 vide letter dated 05.06.2008 addressed to Deputy Commissioner, Shimla, directed him to issue directions to concerned authorities since as per Secretary (Revenue) the respondent was making illegal attempt to grab the property of Smt. Durga Devi mutated in his name. The Deputy Commissioner issued further directions to Tehsildar (Urban), Shimla. The undue pressure has been exerted on Revenue Officers to prevent them from discharging their lawful duties.

14. It has been stated that the allegations of making illegal attempt and misappropriation of properties against respondent made by petitioners were widely circulated in Himachal Pradesh Government Secretariat, Office of Deputy Commissioner, Shimla, S.D.O., Urban, Shimla and Tehsildar Office, Urban, Shimla.

15. The petitioner No. 1 has made false and defamatory allegations in the Civil Suit. The respondent has supported the summoning order dated 30.12.2009, notice of accusation and justified the filing of the complaint. It has been submitted that there are sufficient grounds for proceeding against the petitioners. The rejoinder has been filed by petitioners wherein they have reiterated their stand while denying the stand taken by respondent in the reply.

16. Heard. The learned counsel for the petitioners has submitted that the Courts below have erred in summoning the petitioners and putting notice of accusation to the petitioners u/s 500 IPC. The complaint filed by respondent is malafide. He

has relied Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, . The learned counsel for the petitioners has prayed for granting reliefs prayed in the petition.

17. The learned counsel for the respondent has supported the petition. He has supported summoning order, notice of accusation put to the petitioners and submitted that there are sufficient grounds to proceed against the petitioners. The learned counsel for the respondent has relied Subrata Das Vs. State of Jharkhand and Another, and judgment dated 05.12.2011 in Cr. MMO No. 133 of 2011.

18. The Section 499 IPC is as follows:-

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 expected, to defame that person.

Explanation 1 to 3.- XXX

Explanation 4.- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

19. In preliminary evidence, CW-1 Ramesh Kumar Sood has supported his version, but he has not named any specific person in whose estimation he has been defamed. CW-2 Vivek Sood has stated that he knows complainant and the accused. He has stated that due to false allegations, the complainant has been defamed, whereas, complainant is honest and belongs to good family. CW-3 is the younger brother of complainant. He has stated that he has gone through the allegations leveled by accused in the suits which are false and baseless. On account of allegations, the complainant has been defamed in the family, neighbourhood, relations, tenants, friends and colleagues.

20. CW-4 Gulab Singh has produced certified copy of will Ex.CW1/A. He has not stated anything about the allegations made in the complaint. CW-5 is the witness from G.P.O. He has produced some record. He has also not stated anything regarding the allegations in the complaint. CW-6 Civil Ahlmad, Civil Judge (Senior Division), Shimla has produced record. She has also not stated anything regarding the allegations made in the complaint. CW-7 Liaq Ram Naib Sadar Kanungo Branch, D.C.Office, is also a witness of record. CW-8 Assistant Office Kanungo has also produced some record, but he has also not stated anything about the allegations made in the complaint. CW-9 Narender Sharma from P.N.B. has produced some record. This witness has not stated anything about the

allegations made in the complaint.

21. CW-10 Shyama Nand Sharma, Manager, Establishment H.P. Milk Federation has stated that he knows complainant, who is Personal Assistant to Chairman. The complainant is Class-I Officer. He is honest, hard-working Officer. Complainant has worked with four Chairmen. He has high reputation. No departmental proceedings were ever taken against the complainant. CW-11 Malvinder Singh, Senior Assistant, Establishment H.P. Milk Federation, has produced some record. This witness has not stated anything about the allegations made in the complaint.

22. As per Section 499 read with Explanation-4, the person must be defamed in the estimation of others and not in his self-estimation. The respondent as CW-1 has stated that he has been defamed, but he has not named even a single person in whose estimation he has been defamed. CW-2 has not referred to plaint, replication and other documents relied by complainant nor he has stated that after going through the plaint, replication and other documents, the reputation of complainant has been lowered in his estimation. CW-3 is the brother of the complainant. He has vaguely stated that he has gone through the plaints of the suites filed by accused, but he has not referred those plaints nor he has stated that after going through those plaints, the reputation of the complainant has been lowered in his estimation.

23. CW-10 and CW-11 are from the office of the complainant. They have stated that complainant carries good reputation, but they have not stated that after going through the offending plaint, replication and documents, the reputation of the complainant has been lowered in their estimation. The other witnesses examined by the complainant are of record and they have not stated anything regarding the allegations made in the plaint, replication and other documents relied by the complainant for purpose of defamation.

24. In *J.Jayalalitha v. Arcot N. Veerasamy* 1997 Cri. L.J. 4585, Explanation - 4 to Section 499 IPC has been considered and it has been held as follows:-

Thus, the conjoint reading of Section 499 I.P.C., with this Explanation 4, would make it clear, that in the complaint, there shall be an averment to the effect, that because of the imputation, the complainant's reputation had been lowered in the estimation of others. As indicated earlier, this important ingredient is absent in the complaint and in the sworn statement.

25. In *Narottamdas L. Shah Vs. Patel Maganbhai Revabhai and Another*, , on the basis of editorial published on 22.10.1983 in "Jay Hind" daily, a complaint u/s 500 IPC was filed on 25.10.1983. The process was issued u/s 500 IPC. The High Court has held that by no stretch of reasoning the term "reputation" can imply ones own belief about himself, while determining as to what is their "reputation" in the society, their own opinion about themselves and about their profession is irrelevant even though the same may be extremely conservative, reasonable and therefore correct. The process issued by learned Magistrate was quashed.

26. In Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, the Supreme Court has held as follows:-

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. Magistrate has to carefully scrutinize 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.

27. The learned counsel for the respondent has relied Subrata Das Vs. State of Jharkhand and Another, to the following effect:-

6. We have heard the learned counsel for the parties, but find no reason to interfere with the order under challenge. It is fairly well settled by a long line of decisions rendered by this Court that the power vested in the High Court u/s 482 Cr.P.C. can be invoked for quashing an on-going investigation, complaint or other proceedings only in cases where either there is legal power to the continuance of the proceedings such as the absence of a sanction wherever required or where averments made in the complaint or first information report even if accepted on their face value do not constitute an offence or where there is no legal evidence to support the charge made against the accused. It is also fairly settled that the powers vested in the High Court u/s 482 Cr.P.C. have to be exercised sparingly and that the Court cannot be called upon to appreciate the available evidence or material with a view to find out whether the charge leveled against the accused stands proved. (See Arun Shankar Shukla Vs. State of Uttar Pradesh and Others, , State of Punjab v. Kasturi Lal & Ors. 2004 CrL. L.J. 3866, State of Karnataka Vs. M. Devendrappa and Another, and Central Bureau of Investigation Vs. K.M. Sharan, , State of Haryana & Ors. v. Bhajan Lal & Ors., 1992 Suppl. 1 SCC 335 and R.P. Kapur Vs. The State of Punjab,

28. The learned counsel for the respondent has also submitted on the basis of judgment dated 05.12.2011 in Cr. MMO No.133 of 2011 in Devinder Chauhan and another Versus State of H.P. some times dispute of civil nature may also contain ingredients of criminal offence and if it is so then criminal case is to be tried even if it amounts to civil dispute also.

29. The question involved in the present case is whether on the basis of material on record there are sufficient grounds for issuing process and putting accusation

to the accused u/s 500 IPC. The preliminary evidence has been scanned and no C.W. except self-serving statement of CW-1 has stated that reputation of complainant has been lowered in the estimation of particular witness. In paragraph-14 of the complaint with respect to allegations "as submitted earlier the defendant has been systematically working to manipulate to his advantage the record pertaining to Smt. Durga Devi", it has been alleged that it is per se defamatory.

30. There is no averment in the complaint that other allegations are per se defamatory. I have gone through the allegations which have been alleged to be per se defamatory, but in my opinion, the said allegations are vague and cannot be termed as per se defamatory. The petitioner No.2 has allegedly signed as G.P.A. of petitioner No.1 on letter addressed to Secretary (Revenue). The plaint is not signed by petitioner No.2. In the facts and circumstances discussed above, the Courts below have erred in issuing process and putting accusation to petitioners u/s 500 IPC. In view of above, the petition is allowed. The summoning order dated 30.12.2009, notice of accusation dated 03.11.2011 are set aside and criminal complaint No.245-2 of 2010/2009 pending in the Court of learned Chief Judicial Magistrate, Shimla, is quashed. The pending application, if any, is also disposed of in view of disposal of the main petition.