

Before Jitendra Chauhan, J

HARJIT SINGH HASSANPURI— *Petitioner*

versus

STATE OF PUNJAB & ANOTHER— *Respondents*

CRM No.M-38771 of 2011

September 10, 2013

Code of Criminal Procedure, 1973 - Ss.155,173,199, 482 - Indian Penal Code, 1860 - S.500 - 'Defamation' - 'Complaint' - 'Cognizance' - First Information Report registered against Petitioner u/s 500 IPC at the instance of Respondent No.2, a police inspector - Pasting of scandalous posters brought to notice of police by respondents - Permission sought from Magistrate to investigate the matter after registering FIR - Sanction accorded by Magistrate - Report u/s 173 Cr.P.C. presented - Quashing of FIR sought - Complaint u/s 500 IPC can be made only by aggrieved persons - Report u/s 173 Cr.P.C. cannot be called 'Complaint' - Petition allowed.

JITENDRA CHAUHAN, J

Held, that Section 190(1) does not say as to who can make complaint. The complaint can be oral and need not necessarily be in writing. It is also not necessary that the complaint should be made only by the victim of the crime. Since the Magistrate takes cognizance of the offence, the proceedings on taking cognizance would be initiated even though the persons who had committed the offence were not known at that time.

(Para 10)

Further held, that in the present case, admittedly the offence alleged to have been committed is under Section 500 of the Indian Penal Code. There is a bar under Section 199(1) of the Code, as per which, the complaint should be filed only by the aggrieved person. A charge sheet filed by the police officer cannot be called as a 'complaint' filed under Section 200 of the Code.

(Para 13)

Further held, that the scandalous imputations allegedly leveled in the poster are mainly against Inspector Rajesh Kumar, the then SHO of Police Station Dhanaula, which are of personal character. Only he has the right to file complaint under Section 500 of Indian Penal Code in his individual capacity. The State machinery should not have come into motion against the petitioner. There are serious allegations of giving beating to the petitioner against respondent No.2. Criticism in the absence of malafide would not amount to defamation in a democratic and welfare state. The alleged literature is neither prejudicial to the security of the state nor affects the maintenance of public order.

(Para 15)

Further held, that therefore, no criminal action can be brought against anyone for and on behalf of the State. The State case is not maintainable. The permission of the Illaqa Magistrate dated 02.09.2009, on the application under Section 155 Cr.P.C., is not sustainable, and is set aside. The FIR No.88 dated 11.09.2009 registered at Police Station Dhanaula, under Section 500 IPC, is abuse of process of law.

(Para 17)

H.P.S. Ishar, Advocate *for the petitioner*

Mr. Luvinder Sofat, DAG, Punjab assisted by HC Pargat Singh.

Jitendra Chauhan, J. (Oral)

(1) By filing the present petition under Section 482 of the Code of Criminal Procedure, the petitioner has sought quashing of FIR No.88 dated 11.09.2009, registered under Section 500 of Indian Penal Code, at Police Station Dhanaula, District Barnala and charge sheet dated 11.07.2011 and all consequent proceedings arising thereof.

(2) Learned counsel for the petitioner submits that the offence under Section 500 of the Indian Penal Code being non cognizable, the registration of the FIR is without jurisdiction and the sanction accorded by the Magistrate for taking cognizance of the offence is also illegal. The petitioner is neither the printer nor the publisher of the posters. The material was printed and published by one Bharpur Singh, who was not arrayed as an accused. The petitioner being a Human Rights Activist was tortured in the police station and implicated in the instant false case.

(3) On the other hand, the learned State counsel submits that the petitioner is a history sheeter. The petitioner printed, published and pasted scandalous and defamatory posters against Inspector Rajesh Kumar-respondent No.2, at public places in order to tarnish the reputation of the police in general and Inspector Rajesh Kumar-respondent No.2 in particular. The residents of village Badbar and Bhaini Mehraj brought to the notice of the police about the pasting of scandalous posters in the area. On 2.7.2009 Sarpanch Sewak Ram of Badbar and Avtar Singh Sarpanch of village Bhaini Mehraj alongwith respectable persons came present in the police station and produced the photograph of the poster, which had been found to be published by Action Committee Sangrur. The allegation leveled in the posters were probed into by a Gazetted Officer of the police and found to be false and frivolous.

(4) After completing necessary formalities, the permission was sought from the learned Magistrate to investigate the matter, after registration of the FIR, being a cognizable offence. The sanction under Section 155 of the Code of Criminal Procedure was accorded sanction order dated 2.9.2009. Thereupon, the police registered the impugned FIR. The investigation was conducted by a Gazetted Officer. After completion of the investigation, the challan was presented in Court and charge under Section 500 of IPC had been framed against the petitioner. Lastly it is submitted that in case it is found that the police has no power to register FIR, the challan under Section 173 of the Code presented by the police may be treated as complaint filed on behalf of respondent No.2.

(5) This Court has carefully considered the rival contentions of both the parties and has gone through the paper book with their able assistance.

(6) The sole contention raised before this Court is that the Magistrate was wholly incompetent to direct the police to register the case for investigation, on an application made before him.

(7) Section 199 of the Code reads as under:-

“Prosecution for defamation – (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence. Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf. xxxxxx”

(8) In *Kanhaiya Lal versus State of U.P. (1)* it has been held as under:-

“3. Thus reading these two clauses together there remains no doubt that this provision, Section 199 of the Code intends to bar any FJR or any consequent investigation and submission of chargesheet in any Court by the police. Such grievance can be raised by an aggrieved party through a private complaint alone.

4. The intention of the legislature is very clear. In enacting the bar the legislature has borne in mind the fact that such complaints generally are launched with vested and mostly malicious interests. The bar imposed on cognizance by the Courts is to curb any vexatious prosecution of any person for an offence falling under Chapter XXI. Apart from it any defamatory act against another person by an individual basically gives rise to an obligation under civil law mainly under law of torts. Its notice is individual. The injury suffered by such individual is notional and generally affects him in his repute, honour and prestige. It hurts him in mind. It is not an offence against the society in general. Therefore, the framers of law have decided to keep it out of the purview of the investigation by police. The bar though is implied but is

(Jitendra Chauhan, J.)

very clearly discernible. The above said intention of the legislation cannot be frustrated by taking recourse to the provision of Section 156(3), of the Code. No Magistrate is authorized or entitled to direct investigation in view of the categorical bar imposed by the provisions of Section 199 of the Code upon exercise of any such power. If the Magistrate is not entitled to take any cognizance of an offence falling under Chapter XXI of the said Code on a charge sheet then how can he direct an investigation as well. The only course under the law open to an aggrieved person to satiate his grievance is to file a complaint against his offender."

Section 190 of the Code, which deals with cognizance of offences by Magistrate reads as under:-

190. Cognizance of offences by Magistrates. – (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section 92), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

(9) Complaint is defined in Section 2(d) of the Code as under:-

2(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation- A report made by a police officer in a case which discloses after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

(10) Section 190(1) does not say as to who can make complaint. The complaint can be oral and need not necessarily be in writing. It is also not necessary that the complaint should be made only by the victim of the crime. Since the Magistrate takes cognizance of the offence, the proceedings on taking cognizance would be initiated even though the persons who had committed the offence were not known at that time.

(11) The complainant can also be a public servant. The police officer, who is a public servant is competent to make a complaint and there is nothing in law which prevents a Court from taking cognizance on a complaint made by a police officer, if it disclosed the commission of an offence.

(12) When a complaint is filed under Section 200 of the Code, the learned Magistrate left open with the following options:-

- a. he can refer the matter for investigation under Section 156 (3) of the Code prior to taking cognizance,
- b. he can take cognizance and proceed with the matter,
- c. he can order for an enquiry under Section 202 Cr.P.C., and
- d. he can proceed with the complaint and he can rely on the report filed under Section 202 Cr.P.C.

(13) In the present case, admittedly the offence alleged to have been committed is under Section 500 of the Indian Penal Code. There is a bar under Section 199(1) of the Code, as per which, the complaint should be filed only by the aggrieved person. A charge sheet filed by the police officer cannot be called as a 'complaint' filed under Section 200 of the Code.

(14) Section 499, second exception of the Indian Penal Code reads as under:-

"Second Exception.- Public conduct of public servants.- It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of

(Jitendra Chauhan, J.)

his public functions, or respecting his character, so far as his character appears in that conduct, and no further."

(15) The scandalous imputations allegedly leveled in the poster are mainly against Inspector Rajesh Kumar, the then SHO of Police Station Dhanaula, which are of personal character. Only he has the right to file complaint under Section 500 of Indian Penal Code in his individual capacity. The State machinery should not have come into motion against the petitioner. There are serious allegations of giving beating to the petitioner against respondent No.2. Criticism in the absence of malafide would not amount to defamation in a democratic and welfare state. The alleged literature is neither prejudicial to the security of the state nor affects the maintenance of public order.

(16) In *Kartar Singh and others versus State of Punjab (2)*, in para No.12, it has been held as under:-

"These slogans were certainly defamatory of the Transport Minister and the Chief Minister of the Punjab Government but the redress of that grievance was personal to these individuals and the State authorities could not take the cudgels on their behalf by having recourse to section 9 of the Act unless and until the defamation of these individuals was prejudicial to the security of the State or the maintenance of public order. So far as these individuals were concerned, they did not take any notice of these vulgar abuses and appeared to have considered the whole thing as beneath their notice. Their conduct in this behalf was consistent with the best traditions of democracy. "Those who fill a public position must not be too thin skinned in reference to comments made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust; yet they must bear with them and submit to be misunderstood for a time" (Per Cockburn, C.J. in Seymour v. Butterworth', (1862) 3 F and F 372 (376, 377), and see the dicta of the Judges in 'R. v. Sir R. Carden' (1879) 5 QBD 1. "Whoever fills a public position renders himself open thereto. He must accept an attack as a necessary, though

unpleasant, appendage to his office" (Per Bramwell, B. in Kelley v. Sherlock' (1886) 1 Q. B. 686 (689) Public men in such position may as well think it worth their while to ignore such vulgar criticisms and abuses hurled against them rather than give importance to the same by prosecuting the persons responsible for the same."

(17) Therefore, no criminal action can be brought against anyone for and on behalf of the State. The State case is not maintainable. The permission of the Illaqa Magistrate dated 02.09.2009, on the application under Section 155 Cr.P.C., is not sustainable, and is set aside. The FIR No.88 dated 11.09.2009 registered at Police Station Dhanaula, under Section 500 IPC, is abuse of process of law.

(18) Keeping in view the provisions of the law and facts of the case, this Court feels that it is a fit case where it should exercise of its extra ordinary jurisdiction under Section 482 of the Code of Criminal Procedure Code is warranted in this case.

(19) Accordingly, FIR No.88 dated 11.09.2009, registered under Section 500 of Indian Penal Code, at Police Station Dhanaula, District Barnala; charge sheet dated 11.07.2011, and all consequential proceedings arising therefrom, including report under Section 173 of the Code of Criminal Procedure and charge framed by the Court, are hereby quashed.

(20) However, the respondent No.2 Inspector Rajesh Kumar is at liberty to file the complaint before the Illaqa Magistrate, if he so advised. The period spent in these criminal proceedings shall be excluded in filing the fresh criminal complaint.