

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No. : CRM(M) No. 318/2024
CrIM No. 697/2024

Bodh Raj Sumbria

....Petitioner(s)

Through :- Mr. Rahul Sharma, Advocate.
Mr. Bhavesh Bhushan, Advocate.
Ms. Rupali Sharma, Advocate.

V/s

Joginder Pal Gandhi

....Respondent(s)

Through :- Mr. Fahim Ahmed Mir, Advocate.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER

11.09.2024

1. In the instant petition filed under Section 482 of the Code of Criminal Procedure (*in short*, "**CrPC**"), the petitioner is aggrieved of the order dated 30.03.2024 (*hereinafter referred to as the*, "**impugned order**") passed by the Court of Special Judicial Mobile Magistrate, Passenger Tax, Jammu (*hereinafter referred to as the*, "**trial Court**") in complaint No. 824/2024 dated 23.03.2024 titled, "**Joginder Pal Gandhi Vs. Bodh Raj Sumbria**", whereby the trial Court has taken cognizance under Section 500 of the IPC and has issued process against the petitioner.

2. Mr. Rahul Sharma, learned counsel for the petitioner has vehemently argued that filing of complaint by the respondent is a matter of after-thought with the sole object to implicate the petitioner in a false and frivolous criminal case, which is evident from the bare reading of the averments made in the suit in comparison to the allegations leveled in the complaint with respect to similar alleged incidents. For facility of this Court, such averments in the suit and the allegations in the complaint are reproduced hereunder:-

1. Averments made by the Respondent in the Suit:

With respect to the refusal of marriage (In para 7 of the Suit)

.....in the month of July, 2023 the plaintiff No. 2 came to be transferred to Jammu and continued to meet the defendant No. 2 as usual, however, on 03.08.2023, yet as usual in a routine, when they met each other at Hotel Raddison Blu the plaintiff No. 2 was totally taken a aback when he was. to his utter surprise and astonishment, suddenly came to be told by defendant No. 2 that she does not want to marry him that too without assigning any reason....."

".....the family of the plaintiff No. 2 without any loss of time got into the exercise of contacting the defendant No. 1 and also his onw relation namely Ravi Ji Both telephonically and otherwise but that too was also of no avail of as they explained away the things by simply saying that it is the defendant No. 2 who has taken the call in not marrying the plaintiff No. 2 and they can't do much about this and when they were contacted upon for the reasons for them, no reasons came forth from them also....."

Allegations in the Complaint by the Respondent:

In para 6 of the Complaint, the Respondent has stated that:-

".. ..That, however, on 03.08.2023, Ms Cheena Sumbria, met Ankit Gandhi at the hotel Raddison Blu and sarcastically disclosed, for the first time, that she has decided not to marry him. Subsequently a few days thereafter the accused also m et the complainant and, in presence of a member of right thinking person, also levelled false allegations against Ankit Gandhi. The accused and his said daughter openly alleged that Ankit Gandhi was maintaining bad relations with his female cousin, in presence of a large number of persons, thereby publically ridiculing the image of the complainant and his son. The accused also made derogating remarks against the complainant and his entire family....."

Whereas in para 7 @ page 5, the Respondent states that:-

.....It was on 10.10.2023 that false, concocted and vulgar allegations were leveled publically that Ankit Gandhi was a characterless person and was having bad relations with one of his real female cousin sister. These concocted imputations made publically adversely affected the complainant and his entire family....."

II. Averments in the Suit:

with respect to reason for calling off the marriage

In para 8 of the suit, the Respondent states

".....the plaintiff No. 1 addressed a communication dated 19.08.2023 to the defendant No. 1 to know about the reasons for their such conduct and decision. Realizing that the defendants have been caught on the wrong foot, the defendant No. 1 responded to the above-stated communication vide his letter dated 29.08.2023 which was aimed at only to provide a cover-up to their acts of omission and commission. It is submitted that in the said response the reason for calling off the marriage as was sought to be assigned was a mind-boqqling one as the defendants accused the plaintiff No. 2 to

be in a relationship with some other girls and at the same time imputed the admission unto to him in that behalf which assertion on the part of the defendant No. 1 is not only false to the core but inherently improbable and the plaintiff No. 2 would deny the same with vehemence being manipulative and mala fide one.....xxx”

“.....Had there been any semblance of truth in the imputations as alleged in the response the defendants would have not waited for any communication to first come from the plaintiff's side as the defendant No. 1 being father of a girl was expected to act promptly in the matter and confront the plaintiffs, with element of concern/sensitivity, however, is not at all discernable from the conduct of the defendants.....”

Allegation in the Complaint

In para 7 of the Complaint, the Respondent states:

“..... the complainant. on 19.08.2023, wrote a letter to the accused to explain the reason of denial. However, despite having received the said communication, the accused and Ms CheenaSumbria did 4ot respond at all owing to their fraudulent and dishonest intention at the time of making the promise of marriage.....”

3. From a bare perusal of the above reproduced comparative analysis of the averments made in the suit and also the allegations leveled in the complaint, it is apparent that the complaint filed by the respondent is a gross abuse of process of law and the facts have been twisted to carve out a case for criminal prosecution.

4. Learned counsel for the petitioner has also drawn the attention of this Court to the basic ingredient of Section 499 of the IPC, a perusal whereof reveals that there must be an imputation concerning any person by words spoken, intending to harm or knowing or having reasons to believe that such imputation will harm the reputation of such person. However, in the present case, there is not even a single whisper as to what imputation was alleged to be made by the petitioner against the respondent except a vague allegation, which is not sufficient to constitute the offence of defamation. Therefore, according to learned counsel for the petitioner, taking cognizance by the trial Court of the alleged complaint under Section 500 of the IPC against the petitioner cannot sustain the test of law.

5. It is further submitted by the learned counsel for the petitioner that the trial Court has issued process in the complaint in a mechanical manner and without recording any satisfaction as to how a *prima-facie* case is made out against the petitioner. According to him, it is settled principle of law that while taking any action under Section 190(1) of the Cr.PC read with Section 204 thereof, the Magistrate has to apply his mind to the facts of the case by recording satisfaction before issuing process. Learned counsel further submits that the criminal complaint filed by the respondents lacks basic ingredients of the offence of defamation and the same is nothing, but an abuse of process of law to wreak vengeance against the petitioner with *mala fide* intention of harassing the petitioner.

6. Lastly, he submits that the criminal proceedings, which have been initiated against the petitioner are manifestly attended with *mala fide* and are maliciously instituted with an ulterior motive for wreaking vengeance against the petitioner.

7. In the aforesaid backdrop, it is a fit case for interference, where this Court can exercise its powers vested under Section 482 of the CrPC to quash the criminal proceedings by applying the law laid down by the Hon'ble Supreme Court in case titled, "***State of Haryana and ors. Vs. Ch. Bhajan Lal and ors***, reported as AIR 1992 SC 604."

8. Heard learned counsel for the petitioner at length and perused the record.

9. *Prima-facie* case for grant of interim indulgence is made out.

10. Issue notice.

11. Mr. Fahim Ahmed Mir, Advocate waives notice on behalf of the respondent.

12. List again on **14.10.2024**.

13. Meanwhile, subject to objections from the other side and till next date of hearing before the Bench, it is provided that the criminal proceedings pending against the petitioner under Section 500 of the IPC before the Court of Special Judicial Mobile Magistrate, Passenger Tax, Jammu in Complaint No. 824/2024 dated 23.03.2024 titled “*Joginder Pal Gandhi Vs. Bodh Raj Sumbria*” shall remain stayed.

14. Alteration/modification/vacation on motion.

(Wasim Sadiq Nargal)
Judge

JAMMU
11.09.2024
Ram Krishan

