

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

CRMC 808/2018

Reserved on 15.07.2021

Pronounced on 19.07.2021

T.K.Ganjoo

...Petitioner(s)

Through:- Mr. Sumeer Pandita Advocate
V/s

Meenu Betab

...Respondent(s)

Through:- Mr. Sunil Sethi Sr. Advocate with
Mr. Paras Gupta Advocate.

Coram: HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGMENT

1. This petition is filed under Section 561-A CrPC seeking quashment/setting aside the order dated 04.06.2018 passed by the learned 2nd Additional Munsiff Jammu whereby cognizance under Section 499/500 RPC has been taken by the learned Magistrate on the complaint filed by the respondent and process issued against the petitioner for appearance.

2. The order is challenged primarily on the ground that the complaint does not disclose any offence cognizable under Section 499/500 RPC as the allegations levelled in the complaint do not constitute offence under Section 499/500 RPC having none of the ingredients thereof. It is submitted that defamation can be alleged when the words either spoken or intended to be read or by signs or by visible 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 a person. It is submitted that complaint has been filed against the petitioner in order to harass and torture him. It is further submitted that there was not even a single word written in the legal notice which on the face of it was defamatory in nature, as such, the ingredients of Section 499 do not exist for taking cognizance by the Magistrate and the order impugned deserves to be quashed.

3. On the other hand, learned counsel appearing for the respondent submitted that the petitioner has used defamatory language in the legal notice issued against her. In order to appreciate the arguments, it would be appropriate to go through the relevant provisions being Section 499 RPC which, for facility of reference, is reproduced thus:

Section 499 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”.

4. Having heard learned counsel for the parties and going through the material place on record and after going through the provisions of law, it can easily be said that the complaint filed by the respondent before the Magistrate do not constitute the ingredients of Section 499 RPC.

5 To constitute an offence punishable under Section 499 RPC, the complaint and the statement recorded must satisfy the ingredients of such offence. The complaint, when read as a whole, does not state anywhere that the words used in the legal notice had lowered the reputation of the complainant in the estimation of public. The allegations which have been

made in the complaint do not, in any way, fall within the purview of the provisions of Section 499 RPC. These allegations made in the complaint are with regard to the official functioning and performance of their duties. Even if some words have been written in a legal notice, those would not be construed to be such words as would ordinarily effect the reputation of any body and lower his/her reputation in the estimation of public. What is alleged to have been written by the petitioner in the legal notice can, at the most, constitute a specific offence under the Penal Code, but would not be defamation in order to attract the provisions of Section 499/500 RPC.

6 The trial Court appears to have issued the process without going through the provisions of Section 499 RPC and without satisfying itself whether the allegations made in the complaint and in the statement would amount to a defamation or not. The trial Court while taking cognizance of the complaint and issuing process has failed to exercise its jurisdiction in accordance with law. One of the allegations is regarding the language used in the legal notice that would amount to an offence under the provisions of Penal Code other than the provisions of Section 499 RPC and in such a situation when the ingredients of Section 499 RPC are not satisfied by the complainant and his witnesses, taking cognizance and issuing process would amount to abuse of process of law.

7 That apart, there are allegations of filing of complaints by both the parties against each other at different times. There are also allegations and counter allegations of mismanagement and harassment. All these things would not constitute ingredients of Section 499.

8 Accordingly, the petition is allowed and the order taking cognizance by issuing summons to the petitioner on the complaint filed by the respondent is set aside and the complaint is dismissed.

A copy of this order be sent to the trial Magistrate along with record for consigning the same to the records.

(Vinod Chatterji Koul)
Judge

Jammu.
19.07.2021
Sanjeev PS

Whether the order is speaking : Yes/No
Whether the order is reportable: Yes/No

