* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Pronounced on: 2nd September, 2022**

+ **CRL.M.C. 2332/2020, CRL.M.A. 16426/2020**

SARVESH MATHUR ..... Petitioner

Through: Petitioner in person

versus

STATE OF NCT DELHI & ORS. ..... Respondents

Through: Ms. Manjeet Arya, APP for R-1/State
Mr. P.K. Dubey, Senior Advocate with Ms. Ruby Singh Ahuja, Mr. Vikas Gogna, Mr. Vishal, Mr. Lakshya Khanna, Mr. Satyam Chaturvedi, Mr. Anurag Andley, Mr. Akshat Sharma, Mr. Devesh Nath Tiwari and Mr. Harpreet Kalsi, Advocates for R-2
Mr. Shiv Singh and Ms. Ipsita Agarwal, Advocates for R-3 and R-4

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. The petition has been filed under Section 482 and 483 Cr.P.C. with the following prayers:-

"I. Call for the photocopies/scanned records of CRR/630/2019 and Ct. Case/18737/2018 and quash/set aside in its entirety the impugned order dated 07.10.2020 of the Ld. Additional Sessions Judge, Tis Hazari Courts, Delhi passed in CRR No: 630/2019 and restore the Summoning order dated 30.08.2019 of the Ld. Magistrate, THC, Delhi passed in Ct. Case/18737/2018 vide which he had summoned Accused No: I, 2 and 3 for the offence of defamation punishable u/s 500 IPC.

II. Stay in the interim the impugned order dated 07.10.2020 of the Ld. Additional Sessions Judge, THC passed in CRR/630/2019 against Accused No: 2-Shyamal Mukherjee and Accused No: 3- Ms. Nandini Chatterjee who are yet to be served Summons issued vide order dated 30.08.2019 of the Ld. Magistrate, Tis Hazari Court, Delhi in Ct. Case/18737/2018.

III. Direct the Ld. Magistrate, THC, Delhi to re-serve forthwith the Summons to Accused No: 2 and 3 in Ct.Case/18737/2018 by all permissible modes including by email and whatsapp and to proceed further in accordance with the law.

IV. Pass such other orders as it may deem fit and appropriate in the facts and circumstances of the case".

2. The brief facts as are relevant for the disposal of the present petition may be noted in brief. The petitioner had been in employment of the respondent No.2/ M/s Pricewaterhousecoopers Private Limited as a Chief Finance Officer (CFO). His case is that he had found certain irregularities in the method of working of the respondent No.2 and when he highlighted the same, he was sidelined in the organization and finally he was forced to resign on 31st December, 2011. However, the respondent No.2 issued a Letter of Termination on 27th February, 2012 in which, according to the petitioner, defamatory allegations were made.

3. He submits that his stand stood vindicated in view of subsequent events leading to enquiry being made by various authorities including the Enforcement Directorate, the Income Tax authorities etc., to whom the Supreme Court also had issued directions for time bound investigations. Thus, he was in the capacity of a whistle blower. However, according to the petitioner, he has been targeted by the respondents and subjected to defamation and litigation.

4. The instant petition arises out of a complaint that the petitioner filed under Section 200 Cr.P.C. before the learned Metropolitan Magistrate, Tiz Hazari Court on 22nd October, 2018 alleging that the respondents No.2,3 and 4, being accused No.1,2 and 3 in the complaint, had committed the offence of defamation punishable under Section 500 IPC.

5. The petitioner has alleged the commission of the said offence on the basis of two publications. One publication was on 25th July, 2017 in the Economic Times whereas the second publication was on 3rd August, 2017 in the Outlook Magazine. The learned MM vide order dated 30th August, 2019 summoned the respondents No.2 to 4 to face trial for the offence punishable under Section 500 IPC holding that the allegations made by the complaint "prima facie constituted the said offence having been committed" by the respondents No.2 to 4.

6. On being so summoned the respondent No.2 filed a criminal revision being No.630/2019 before the learned Additional Sessions Judge-02, Central, Tiz Hazari. Vide the order dated 7th October, 2020 impugned in the present petition, the learned ASJ concluded that there was no material on the basis of which the Trial Court could have summoned any of the accused persons and even if two of them were not before the court,

by exercise of the powers vested under Section 397/399 Cr.P.C., for reasons given in the impugned order, the summoning order was set aside in its entirety.

7. The petitioner who has appeared in person has filed detailed written submissions which has also been reiterated orally before this Court.

8. The petitioner has submitted that the learned Sessions Court had erred in setting aside the summoning order qua the respondents No.3 and 4 when they were not even before the court. It is also submitted that even as regards the respondent No.2, the order impugned was in the face of the settled position in law that the revisionary court ought not to substitute its view so long as there was material before the learned Trial Court to issue summons to the accused. Relying on ***Nupur Talwar v. CBI***, (2012) 2 SCC 188, ***Mehmood Ul Rehman v. Khazir Mohammad Tunda***, (2015) 12 SCC 420, ***Mohd. Allauddin Khan v. State of Bihar***, (2019) 6 SCC 107 and ***Aroon Purie v. State***, 2021 SCC OnLine Del 3904, it was argued that the courts have always upheld the decision of the Trial Court to summon or not to summon persons as accused in complaint cases. Therefore, the learned Sessions Court erred in going into the question of summoning by evaluating the evidence. It was also submitted that what prevailed with the learned Sessions Court seems to be the defence that the respondents No.2 to 4 could have possibly raised and such consideration was premature. Reliance has been placed on ***Arundhati Sapru v. Yash Mehra***, 2013 SCC OnLine Del 4521. At the same time, admissions made in the revision petition by the respondents have been overlooked.

9. It was further submitted that the learned Sessions Court had gone by individual words, being *'disgruntled employee'* instead of reading the

complaint as a whole, appreciating the true meaning of "defamatory statement" and "reputation". It was further submitted that the learned Trial Court had looked into extraneous facts erroneously and that specific acts of making and publishing with intent to defame the petitioner had been attributed to the respondent No.3, Chairman of respondent No.2 and the respondent No.4, Chief Communications Officer of respondent No.2. For acts done by them on behalf of the respondent No.2, all of them were liable to face trial. It was orally submitted that loss had been suffered by the petitioner as the accusation that he had retained privileged information of the respondent No.2 had impacted his employability. Thus, it was urged that the impugned order be set aside and the matter remanded to the learned MM for proceeding with the trial.

10. Mr. P.K. Dubey, learned senior counsel on behalf of the respondents No.2 to 4 submitted that there was no error in the impugned order and the petition be dismissed. It was contended that the complainant had not adhered to the procedure as he had failed to file a list of witnesses as required under Section 204 Cr.P.C. No witness, being the newspaper reporter or an editor of the magazine, not even the author of the articles in question, have been examined and were not even named in the list of witnesses. The learned Trial Court ought not to have allowed the examination of additional witnesses as no amendment in a complaint was permissible as held in ***Laloo Prasad v. State of Bihar*** 1996 SCC OnLine Pat 471.

11. It was further submitted that neither on the averments in the complaint nor even on the evidence, was there anything to show that the respondents had made the alleged imputations or published the same in the

newspaper and magazine. In the Economic Times, there was a reference to a written response by the PW-3, but that has not been brought on the record to show any of the respondents being party to that response. The content in the newspaper and the magazine were only in the nature of hearsay evidence till the author testified to have written it. It was further pointed out that a bare reading of the articles would indicate that the publication was not at the instance of respondent No.2. At best, a response was given to whatever had been revealed to the author by the petitioner himself as there has been reference to his alleged disclosures to various authorities and their follow up. Relying on the judgment in ***Dilip Hariramani vs. Bank of Baroda***, 2022 SCC OnLine SC 579, it was submitted that the onus on the complainant in this regard has not been discharged. Moreover, by merely holding a position, a person cannot be made vicariously liable. Thus, merely because respondents No.3 and 4 held positions in the respondent No.2, would be no reason to summon them as accused in a defamation case.

12. Learned senior counsel further disputed that there are admissions in the revision petition that was filed before the learned ASJ by the respondents. He pointed out to various paragraphs viz Para F, H, Q and S etc. in the revision petition to submit that pleas that had been taken were legally permissible pleas and there was no admission. Alternative arguments could be advanced and were acceptable in law. Therefore, what was placed before the learned Sessions Court was not the defence of the respondents.

13. Finally, it was submitted that the petitioner had not brought on record any evidence to show that he had applied for jobs and which were

refused because of the alleged publication. The words used like *'disgruntled employee'* did not constitute defamation as these were words used in common parlance. Hence, it was prayed that the petition be dismissed with cost.

14. Reliance was placed on ***Urmila Devi v. Yudhvir Singh*** (2013) 15 SCC 624, ***S.Khushboo v. Kanniammal*** (2010) 5 SCC 600, ***Mehmood UI Rehman v. Khazir Mohammad Tunda*** (2015) 12 SCC 420, ***Pepsi Foods Ltd. v. Special Judicial Magistrate*** (1998) 5 SCC 749, ***Rabisingh Naik v. Arjun Majhi*** 1989 SCC OnLine Ori 304, ***Md. Rafique Ahmad v. State of Bihar***, 2006 SCC OnLine Pat 249, ***Valmiki Falerio v. Lauriana Fernandes***, 2005 SCC OnLine Bom 1584, ***Dhariwal Tobacco Products Ltd. v. State of Maharashtra*** (2009) 2 SCC 370, ***Rajendra Kumar Sitaram Pande v. Uttam*** (1999) 3 SCC 134, ***Amar Nath v. State of Haryana*** (1977) 4 SCC 137, ***Subramanian Swamy v. Union of India*** (2016) 7 SCC 221, ***Vadilal Panchal v. Dattatraya Dulaji Gha Digaonkar***(1961) 1 SCR 1, ***Amit Kapoor v. Ramesh Chander*** (2012) 9 SCC 460, ***Sham Sunder v. State of Haryana*** (1989) 4 SCC 630, ***Maksud Saiyed v. State of Gujarat*** (2008) 5 SCC 668, ***Narender Kapoor v. Ramesh C. Bansal*** 1998 SCC OnLine Del 124 and ***Tej Kishan Sadhu v. State*** 2013 SCC OnLine Del 1753.

15. In rejoinder, the petitioner submitted that a mini trial was not permissible when the court was dealing with a petition under Section 482 Cr.P.C. Reliance has been placed on ***State of U.P. v. Akhil Sharda***, 2022 SCC OnLine SC 820. Since the summons have been issued on evidence, the revisionary court could not have interfered with it. The publication had been duly proved by two witnesses. Witnesses had also testified to the

lowering of the reputation of the petitioner and unnecessary confusion has been sought to be raised by the learned senior counsel for the respondents No.2 to 4 to contend that the publications were by PWC whereas the respondent No.2 was M/s Pricewaterhousecoopers Private Limited. It was submitted that the entities were all the same and even the appointment letter of the petitioner with M/s Pricewaterhousecoopers Private Limited was issued by PWC. It was denied that the articles were at the instance of the petitioner. It was also submitted that the words used to respond to the recommendation of Justice AP Shah (retired) regarding irregularities by PWC was in a far more cordial language than was used in the articles under question while responding to the petitioner.

16. In the circumstances, it was prayed that the petition be allowed.

17. I have heard the arguments of the petitioner in person and the learned counsel for the respondents No.2 to 4. The records have been duly perused including the Trial Court Records and the petitioner's written arguments. The cited judgments have also been considered.

18. While considering a petition under Section 482 Cr.P.C., it is trite that the court is not called upon to evaluate factual matrix. The concern of the court while exercising inherent powers is to consider whether the courts below had exercised their powers within their jurisdiction and whether all material had been considered by them. The conclusions drawn would be relevant only to determine whether there was a perversity in reaching such conclusions or the impugned orders have resulted in grave miscarriage of justice which called for correction by the High Court in exercise of its inherent powers. This has been so spelt out in numerous cases including ***Amit Kapoor v. Ramesh Chander***, (2012) 9 SCC 460 and

Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609.

19. The first contention of the petitioner is that the learned Sessions Court had exceeded its jurisdiction by quashing the summoning order against the respondents No.2,3 and 4, though they had not moved against the order of summoning. This submission cannot be accepted. Section 397 Cr.P.C. provides for powers of a Sessions Judge to call for and examine the record of any inferior criminal court situated within its jurisdiction for the purposes of satisfying itself as to the correctness, legality or propriety of any finding or evidence or order, recorded, as also to the regularity of any proceeding of such inferior court. Section 399 Cr.P.C. spells out the powers of revision of the Sessions Judge where the records have been called for by itself, whereby such powers would be co-extensive with that of the High Court.

20. To therefore say that the Sessions Judge could have looked into the correctness of the summoning order qua the respondents No.3 and 4, only if they had approached it, would be an incorrect reading of the law. The Sessions Court would be well within its powers to satisfy itself about the legality and irregularity or the proceedings or orders made by the learned Trial Court to determine whether it was grossly erroneous or the finding was recorded based on no evidence or material evidence was ignored or judicial discretion was exercised arbitrarily or perversely.

21. It is a necessary corollary to the exercise of this power that where the revisionary court finds that the order in question was not legal or was based on no evidence or there was a clear error in the order of the inferior court, it would be justified in setting aside that order. However, that would not tantamount to the substitution of the decision of the revisionary court

for that of the Trial Court. In the instant case evidence was required to be looked into to determine whether there was material for the Trial Court to summon the accused. It cannot be held that the learned Sessions Court had misdirected itself by looking at the nature of the publications to determine whether the learned Trial Court could have passed the order summoning the respondents.

22. A perusal of the impugned order would disclose that the learned Sessions Court has not gone beyond the contents of the two articles, on the basis of which the petitioner claims he had been defamed. It is on that basis that it has come to the conclusion that there was no material at all to summon the respondents to face trial. Therefore, this contention of the petitioner does not appear to be tenable.

23. Before this court the learned senior counsel for the respondents No.2 to 5 contended that the newspaper articles have not been duly proved and that there were no witnesses examined to establish the necessary ingredient of defamation as provided under Section 499 IPC, namely, of the lowering of the moral and intellectual character in the estimation of others. The petitioner has however submitted that he has examined CW-2 and 3, who are his friends, to testify how the articles had lowered the reputation of the petitioner and he had also examined CW-4 and 5 to prove the articles. These testimonies have been perused by this Court to consider whether the learned Sessions Court had overlooked any material evidence.

24. What is apparent is that neither CW-4 nor CW-5 is the author of the articles published nor do they testify as to at whose instance the publications were effected. The witnesses CW-2 and 3 have merely testified that they knew the complainant for about 35-40 years. CW-2 has

stated '*from the articles already exhibited in CW-A and B, it appears to me, in my estimation that the reputation and the integrity of the complainant has been lowered*' whereas the CW-3 has stated that '*from the articles already exhibited in CW-A and B, it appears to me, in my estimation, that the reputation and integrity of the complainant has been lowered in my eyes on account of the aforesaid articles.*'

(emphasis added)

25. It is clear that these testimonies do not add to the case of the petitioner. What is required is evidence to establish that the respondents No.2 to 5 had made or published imputations concerning him intending to harm or knowing or having reasons to believe that such imputation will harm his reputation. This imputation would harm a person's reputation only if, directly or indirectly in the estimation of others, his moral or intellectual character is lowered. Two things were therefore required to be established by the petitioner. One, that the publications in question had been made by the accused persons, for which direct evidence had to be placed on the record connecting the respondents No.2 to 5 to the publications. The reference in the article in the Economic Times to a "Spokesperson" cannot be inferred to refer to either respondent No.3 or respondent No.4, only because one is the Chairman of the respondent No.2 and the other is the Chief Communications Officer. Criminal liability cannot be fastened on the basis of a person holding a position with nothing more to specify the role played by such a person in the commission of a crime. Since the entire edifice of the case of the petitioner rests on the publication of these two articles, it was necessary to show how the respondents were connected to the publication. The petitioner has not done

so.

26. Secondly, there must be proof of lowering of the character in the eyes of third parties. Friends who knew the petitioner for 35-40 years may have had to explain why two publications referring to the petitioner as a disgruntled ex-employee lowered his character in their estimation, though they would have been fully aware of the resignation of the petitioner from the employment way back in December, 2011 and his termination in February, 2012 and why such lowering had occurred only when the publications occurred in July, August, 2017. Their testimonies only records their opinions in the matter as appeared to them. Such statements fall short of the quality of evidence required under Section 499 IPC to establish the commission of the offence under Section 500 IPC.

27. That apart, the conclusion of the learned Sessions Court that the use of the word 'disgruntled employee' was not slanderous is a justified conclusion. The reading of the articles, as rightly observed by the learned Sessions Court, shows that the grievance of the petitioner is a response to a query by the Economic Times to certain litigation initiated by the petitioner. It is for him to explain how litigation initiated by him became subject matter of the publication. It is only fair reporting to seek a response from the person against whom charges have been levelled.

28. From the reading of these two articles, it would also be clear that the reference in the impugned order is not to the defence of the respondents No.2 to 3 under the 9th explanation to the Section 499 IPC, as argued by the petitioner, but is a fact evident from the very publications. The petitioner has admitted in his complaint filed before the learned Metropolitan Magistrate that he had complained to various Government

authorities of evasion of income tax, benami transactions, falsification of books of accounts, violation of Foreign Exchange Management Act, 1999 (FEMA) and others laws, running into 100 of crores of rupees by the respondents and that even the Supreme Court had ordered investigations into alleged illegal inflows from overseas and FEMA violations. The complaint also mentions that he had filed a criminal complaint on 25th May, 2017 before the Chief Judicial Magistrate, Gurugram which included defamation and was pending. It is a moot question why this second complaint alleging defamation was then filed in Delhi, though neither Economic Times nor Outlook Magazine is limited to Delhi.

29. Finally, if the statement that the petitioner's employment was terminated in 2012 after it was found that he had retained and misused some of the company's proprietary information had adversely affected his prospects of employment, no such evidence has been placed on record. In any case, the fundamental requirement was to establish that these statements were made by the respondents No.2-5.

30. This court, therefore, finds no error or perversity in the impugned orders. In fact, the powers have been rightly exercised by the learned Sessions Court and to have allowed the order of summoning to continue would have resulted in grave injustice and abuse of process of court. Summoning as has been held in ***Pepsi Foods Ltd. v. Special Judicial Magistrate*** (1998) 5 SCC 749 in a criminal case entail serious repercussions. As has been held in ***Mehmood Ul Rehman v. Khazir Mohammad Tunda***, (2015) 12 SCC 420 before summoning the Magistrate has to apply his mind carefully to all the available material which in the instant case appears to have not been the case.

31. The petition being devoid of merit is dismissed alongwith other pending applications.

32. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

SEPTEMBER 02, 2022
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