

IN THE HIGH COURT OF DELHI: NEW DELHI

+ **CRL. M.C. No. 1187-2010**

Judgment reserved on 26th May, 2011

% Judgment delivered on 04th July, 2011

MS. ROMY KHANNAPETITIONER

Through: Mr. Atul Jain, Adv.

Versus

STATE (GOVT. OF NCT OF DELHI)
NEW DELHI & Ors.RESPONDENTS

Through: Mr. U.L. Watwani, APP for the
State
Mr. Rakesh Sharma, Adv. for R-
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Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | Yes |

A.K. PATHAK, J.

1. By way of present petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.), petitioner seeks quashing of complaint under Section 500 of the Indian Penal Code (IPC) filed by respondent no.2 before the Metropolitan Magistrate, Delhi. Petitioner has also prayed that the order dated 8th September, 2009 passed by Metropolitan Magistrate, whereby she has been summoned, be set aside.

2. Factual matrix of the case as unfolded is that on 3rd February, 2000 FIR No. 106/2000 under Sections 342/376/511/506/34 IPC was registered against respondent no. 2 at Police Station Rajouri Garden, on the complaint of petitioner. In the FIR, petitioner had alleged that respondent no. 2 was brother of her friend, namely, Meenu. She used to treat him like her brother. However, he asked her to be his friend. She declined to this proposal. On 24th December, 1999, Meenu met her at Janakpuri bus stand at about 9:30 AM while petitioner was going to Delhi University. She told her that she would accompany her to University after changing clothes. Accordingly, petitioner went to Meenu's house. Meenu left her in a room by saying that she would return after changing clothes. After about two minutes respondent no. 2 came inside the room and bolted the door. Thereafter, he forcibly removed her clothes in order to commit rape upon her. In fact, he nailed her down on the bed and threatened to kill her. He also took her nude photographs. Respondent no. 2 also gave her a fist blow resulting in injuries on her nose. Somehow, petitioner managed to save herself and return home. Due to the threats extended by the respondent no.2, petitioner did not disclose this incident to her parents. Even thereafter, respondent no. 2 and his sister continued to threaten the petitioner that they would distribute her naked photographs in her locality. On 31st January, 2000, when petitioner was going to Tilak Nagar market along with her sister, Respondent no. 2 intercepted them and tried to pull the petitioner in his car. When

petitioner and her sister resisted he beat them up. On reaching home, petitioner and her sister narrated the entire story to their parents.

3. Respondent no. 2 filed a Criminal Writ Petition No. 359/2001 seeking quashing of the FIR. He alleged that the petitioner was having friendly relations with her. One day father of petitioner had seen them roaming around in the market. Thereafter, at the instance of her father, petitioner got the FIR registered falsely implicating the respondent no.2. During the hearing of said petition petitioner made a statement before a Division Bench of this Court that the respondent no. 2 had never made any attempt to commit rape upon her nor was she harassed by him; She had lodged the complaint at the instance of SI Subhash Chander of Police Station Rajouri Garden, who was her father's friend. She was having friendly relations with respondent no.2. Her father was against their friendship and therefore, she had lodged FIR under the pressure of her father and SI Subhash Chander. In view of this statement, FIR in question was quashed by a Division Bench of this Court vide order dated 30th May, 2001. In the said order no direction was passed for initiating any proceeding against the petitioner, her father or SI Subhash Chander. Thus, it appears that respondent no.2 had filed a Criminal Appeal No. 522/2002 before the Supreme Court titled Davinder Singh @ Tinku & Anr. vs. State (Govt. of NCT of Delhi) & Anr., which was dismissed on 22nd January, 2009. Even, Supreme Court did not deem it fit to pass any such direction.

4. On 22nd February, 2003 respondent no. 2 has filed the present complaint against the petitioner, her sister and her father, alleging therein that the petitioner had falsely implicated the respondent no. 2 in a criminal case under the pressure of her father. She had also filed a complaint with the Delhi Commission for Women under the pressure of her father, wherein respondent no. 2 was summoned. False and malicious prosecution launched by the petitioner against respondent no.2, had defamed him and his family, thus, petitioner, her father and sister were liable to be punished under Section 500 IPC. After recording the pre-summoning evidence Metropolitan Magistrate has summoned only the petitioner.

5. It would be relevant to quote para 20 and 21 of the complaint of respondent no. 2 with advantage, which reads as under:-

“20. That the complainant had thereafter appeared before the court of Ms. Bimla Makin, ASJ, Delhi where the challan was pending. The Hon’ble Court of Ms. Bimla Makin, ASJ, Delhi had consigned the file/challan vide its order dt-30-7-2001. A certified copy of the said order is marked as Annexure P-4. The complainant had even served a notice upon the accused persons, which was duly received by them but they did not respond. A copy of the said notice is marked as Annexure P-5. That all the above stated facts have vividly clarified that the accused persons had connived together to lodge a false and frivolous case by putting defamatory false allegations and thereby setting up a malicious as well as defamatory prosecution of complainant u/s 342/376/511/506/292A/509/34 IPC in PS: Rajouri Garden. As truth was to prevail so

the said false FIR was quashed on the basis of true statement of accused no.1 and the complainant.

21. That the accuseds have committed an offence of defamation with the sole motive to harass torture and defame him to and further of giving false evidence and statements thereby set the said FIR into a chain of Acts, due to which the complainant had suffered lot of agony and even remained imprisoned for his fault. However, the complainant is already before the Hon'ble Supreme Court of India challenging the order of Hon'ble High Court of Delhi wherein necessary direction/action has not been passed against the police officials and for the investigation thereof."

6. Learned counsel for the petitioner has vehemently contended that the complaint is barred by limitation having been filed after 3 years of lodging of the FIR. FIR was lodged on 3rd February, 2000; whereas complaint has been filed on 22nd February, 2003, which is beyond the period of limitation of 3 years. Metropolitan Magistrate ought to have satisfied himself on the point of limitation at pre-cognizance stage. Since the complaint had been filed beyond the period of limitation Metropolitan Magistrate was precluded from taking cognizance thereof, thus, summoning order is without any jurisdiction. Reliance has been placed on **Surinder Mohan Vikal vs. Ascharj Lal Chopra AIR 1978 SC 986**, **Ghanshyam Dass vs. Shyam Sunder Lal 1982 Cri.L.J. 1717** and **P.M. Kathiresan vs. Shanmugham 1995 Cri. L.J. 2508**. As against this, learned counsel for respondent no.2 has contended that the complaint had been filed within 3 years of petitioner lodging the complaint

before Delhi Commission for Women, thus is within the period of limitation. He has further contended that FIR was quashed by the Division Bench of this Court on 30th May, 2001 giving rise to the 'cause of action' in favour of respondent no. 2 to file the complaint and the complaint having been filed within 3 years from the said date(s) was not barred by limitation. Metropolitan Magistrate was right in taking cognizance of complaint and summoning the petitioner, inasmuch as, the averments made in the complaint, duly supported by the statements of CW1 to CW3, disclose ingredients of the offence under Section 500 IPC.

7. In this case, FIR was registered on 3rd February, 2000 while complaint has been filed on 22nd February, 2003, that is, after three years. The contention of counsel for the respondent no. 2 that since defamatory statements had also been made in the complaint dated 7th April, 2000 before the Delhi Commission for Women, this complaint having been filed within three years from the said date is within limitation, has no force. No such complaint was placed on record of Trial Court nor complainant CW2 has whispered a word about it while in witness box. Further no specific averment has been made in the complaint that respondent no. 2 was defamed because of such complaint. Perusal of paras 20 and 21 of the complaint shows that whole thrust has been laid on the malicious and defamatory statements made in the FIR. Thus, complaint having been filed beyond a period of 3 years from the date of registration of FIR, on the face of it, is barred by limitation.

8. Section 468 Cr.P.C. lays emphasis on the period of limitation for taking cognizance of certain offences and reads as under :-

“1) Except as otherwise provided elsewhere in this Code, no court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) Six months, if the offence is punishable with fine only;

(b) One year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

9. A perusal of the above provision clearly shows that Section 468 (2)(c) Cr.P.C. in no uncertain terms specifies a period of 3 years for taking cognizance of an offence which is punishable with imprisonment for a term exceeding one year but not exceeding 3 years. Section 500 IPC envisages that whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. Meaning thereby, the period of limitation applicable to the complaints under Section 500 IPC would be governed by Section 468(2)(c)

Cr.P.C. Section 469 Cr.P.C. specifies the commencement of period of limitation. Section 469(1)(a) Cr.P.C. provides that the period of limitation, in relation to an offence, shall commence, - (a) on the date of the offence. It is not the case of respondent No. 2 that Clauses (b) and (c) get attracted in this case. FIR was registered on 3rd February, 2000 and police had visited the house of respondent no. 2 in the night intervening 3rd /4th February, 2000 at about 1:30 am in order to arrest him. In the complaint under Section 500 IPC, respondent no. 2 has categorically stated that defamatory matter was contained in the FIR. So, according to the complainant's version, offence under Section 500 IPC was made out on 3rd February, 2000, when the defamatory statement was made in the FIR and, in my view, this is the date of offence within the meaning of Section 469(1)(a) of Cr.P.C. and the period of limitation of three years will commence with reference to that date for the purpose of Section 468 Cr.P.C. The complaint, thus, having been filed beyond the period of limitation is, barred by Section 468 Cr.P.C. In these facts, it was not permissible for the Magistrate to take cognizance of the offence after expiry of period of limitation and by doing so he has acted beyond his jurisdiction.

10. In *Surinder Mohan Vikal* (supra), Supreme Court, in the similar facts, has held that a complaint under Section 500 IPC for defamation will be barred if filed three years after the commission of the offence. Where in a complaint under Section 500 IPC it is alleged that the defamatory matter was contained in a complaint under Sections 406/420 IPC against the complainant, the period

of limitation for filing complaint under Section 500 IPC would commence from the date of the complaint under Sections 406/420 IPC and not from the date when complainant was finally acquitted of offences under Sections 406/420 IPC. Sub-Section (1) of Section 469 Cr.P.C. specifically provides that the period of limitation prescribed in Section 468, in relation to an offence, shall commence, inter alia, on the date of the offence and the question of 'cause of action' having arisen on account of acquittal, would not arise in such cases as the controversy relates to the commission of an offence. In Ghanshyam Dass (supra) the facts involved were more or less similar to the facts of this case. Petitioner Ghanshyam Dass had lodged an FIR against Shyam Sunder Lal. In a case arising out of said FIR, Shyam Sunder was acquitted. Thereafter, he lodged a complaint under Section 500 IPC against Ghanshyam Dass alleging therein that defamatory statements had been made in the FIR. The complaint was filed by Shyam Sunder Lal after about 7 years from the date of registration of the FIR but within 3 years from the date of acquittal. As Magistrate took cognizance of offence, Punjab and Haryana High Court held that Magistrate at pre-cognizance stage has to apply his mind to the question of limitation. Having failed to do so, the proceedings become without jurisdiction and were liable to be quashed. It was further held that the period of limitation for filing the complaint under Section 500 IPC would commence from the date of registration of FIR containing defamatory statements and not from the date of acquittal. In PM

Kathresai (supra) Madras High Court has held that if any offence is made out in a complaint under Section 500 IPC for defamation, Section 468(2) Cr.P.C. is attracted and cognizance of offence should be taken within a period of three years from the date of occurrence. Thus, where the date of offence under Section 500 IPC was identified, inasmuch as, defamatory remarks were made in a complaint filed before the police by the accused, the starting part of limitation would be the date of complaint and not the date on which the evidence was given by the party nor the date of knowledge of the appellant about filing of such complaint.

11. In view of the above discussions, impugned order dated 8th September, 2009 as also the complaint case titled “Davinder Singh @ Tinku vs. Romy Khanna & Ors.” is quashed.

12. Petition is disposed of in the above terms.

A.K. PATHAK, J.

JULY 04, 2011
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