

S. No. 41

Regular Cause List

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

**CRMC No. 29/2019 (CRM (M) No. 29/2019  
CrIM No. 230/2019 (01/2019) CrIM No. 635/2022**

*Reserved on: 13-02-2023*

*Pronounced on: 07-04-2023*

**Sheikh Khalid Jehangir**

... Petitioner(s)

Through: Mr. Mohsin Qadri, Sr. AAG with  
Ms. Mehreen, Adv.

**Vs.**

**Nayeem Akhter**

...Respondent(s)

Through: None

**CORAM:**

**HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**

1. In the instant petition filed under inherent power of this court enshrined under Section 561-A/482 Cr. P. C. quashment of complaint pending before the Chief Judicial Magistrate, Srinagar (for short the Magistrate) titled as "*Nayeem Akhter vs. Sheikh Khalid Jehangir*" along with order dated 16-11-2018 (for short the impugned order) passed by the said court is being sought by the petitioner.
2. The facts those stem out from the petition would reveal that the petitioner herein upon his appointment as Vice Chairman on the Board of Directors of J&K Project Construction Corporation in terms of OM No. GAD (ADM)63/2017-V dated 10-03-2017, addressed a letter being DO No. 01/KJ/2018 dated 21-06-2018, to the then Governor of J&K, pointing him out various acts of omission and commission having surfaced in the Corporation including that the Works Minister on verbal directions had allotted prestigious and

projects of high importance to inexperienced some blue eyed persons in the construction field without tenders and following of codal procedure and made a request therein for constitution of a Fact Finding Committee for investigating said matters so that the Government exchequer and money of the masses is not looted anymore and till such time investigation is completed to put halt on the said works where after the respondent herein instituted the impugned complaint against the petitioner herein alleging that the accused petitioner herein with the malicious intend to tarnish the image and the reputation of the complainant/respondent herein wrote the letter dated 21-06-2018 to the Governor of J&K leveling therein baseless allegations of corruption and favoritism though without mentioning in the letter name of any person yet has been aimed at to the complainant/respondent herein and that the said letter came to be broadcasted by various TV news channels including Republic TV besides being published in various daily newspapers and in the process by the said defamatory and *mala fide* action caused irreparable damage to the complainant's/respondent's image and reputation in the eyes of his well wishers and in the society.

3. The Magistrate after entertaining the impugned complaint and taking cognizance thereof summoned the accused petitioner herein in terms of the impugned order.
4. The impugned complaint and the order is being questioned in the petition on the grounds urged therein.

**Heard learned counsel for the petitioner and perused the record.**

5. Before advertng to the grounds of challenge urged in the petition it becomes important to refer to the letter dated 21-06-2018 stated to

have formed the basis for maintaining the impugned complaint by the complainant/respondent herein against the accused petitioner herein. The contents of the said letter in extenso are extracted and reproduced hereunder:-

*“Sheikh Khalid Jehangir*

*The Hon'ble Governor,  
Jammu and Kashmir  
Srinagar.*

*DO No. 01/KJ/2018*

*Dated: 21<sup>st</sup> June, 2018*

*Respected Vohra Sahib.*

*The under signed had assumed the Charge of Vice Chairman JKPCC Ltd on 11/05/2017 in pursuance to Government order No:- 161-PW (R&B) of 2017 Dated: 11/05/2017. During this period I have experienced that Jammu and Kashmir Projects Construction Corporation mainly executes the major and prestigious developmental Projects which are meant to strengthen the infrastructure of the state. The corporation being main construction of the State Government is entrusted major part of the works/projects for execution on 10 to 15% corporation overhead charges on the actual project cost. Out of this overhead percentage the corporation meets its salary and Administrative overheads as the corporation is not being paid any budgetary support from the state Government. To my experience the corporation is a profitable PSU but because of too many loopholes in the system it hardly maintains it's a salary and Administrative overheads.*

*During this tenure it was noticed that the Works Minister on verbal directions has allotted the Prestigious and projects of highly importance to some blue eyed persons who do not have experience in the construction field without tenders or following the codal procedure. These projects include “The Medical College Anantnag, Government College of Engineering and Technology at Safapora and Kathua, The projects entrusted to JKPCC under World Bank funding and many more”. The works of high magnitude are being allotted to these persons in-violation of Rules and Regulations while as the works of very meager magnitude are subjected to e-tendering to befool the masses. The issue was raised and agitated by the undersigned in the recent meeting of Board of Directors JKPCC Ltd held on 09<sup>th</sup> of May-2018 which was chaired by the then Works Minister as Chairman JKPCC Ltd. It is worth to mention that the report has been recently carried by a leading Daily (News Paper) from Srinagar Copy enclosed”.*

6. Before proceeding further in the matter a reference to the Provisions of Section 499 RPC also becomes imperative hereunder:-

**“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.

**Explanation 1.**—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

**Explanation 2.**—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

**Explanation 3.**—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

**Explanation 4.**—No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgrace-ful.

**First Exception—Imputation of truth which public good requires to be made or published.**—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

**Second Exception—Public conduct of public servants.**—It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

**Third Exception – Conduct of any person touching any public question**

– It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

**Fourth Exception – Publication of reports of proceedings of Courts** – It

is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

**Explanation** – A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

**Fifth Exception – Merits of case decided in Court or conduct of**

**witnesses and others concerned** – It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

**Sixth Exception – Merits of public performance** – It is not defamation to

express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

**Explanation** – A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

**Seventh Exception – Censure passed in good faith by person having**

**lawful authority over another** – It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

**Eight Exception – Accusation preferred in good faith to authorized**

**person** – It is not defamation to prefer in good faith an accusation against any

person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

**Ninth Exception – Imputation made in good faith by person for protection of his or other interest** – It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the projection of the interest of the person making it, or of any other person, or for the public good.

**Tenth Exception – Caution intended for good of person to whom conveyed or for public good** – It is not defamation to convey a caution, in good faith, to one person against another; provided that such caution be intended of the good of the person to whom it is conveyed, or of some person in whom that person is interested or for the public good.”

A composite reading of aforesaid provisions would reveal that the same brings under the criminal law the person who publishes as well as the person who makes defamatory imputations.

Therefore, in brief, the essentials of defamation are “firstly” the words must be defamatory, “secondly” they must refer to the aggrieved party and “thirdly” they must be maliciously published. The Explanations appended to the Section amplify the scope of the Section whereas the Exceptions take certain things out of the application of the Section.

Thus, in order to constitute an offence of defamation, the essential ingredient is to make an imputation concerning any person with intention to harm or with a knowledge or reason that such imputation will harm the reputation of the said person and an imputation without an intention to harm or without knowledge or having reason to believe that it will harm the reputation of such person will not constitute an offence of defamation.

7. Keeping in mind the aforesaid position of law and the letter dated 21-06-2018 supra on the basis of which the complainant/respondent herein maintained the impugned complaint, it needs to be examined and analyzed in order to find out as to whether the allegations in the impugned complaint constitute *prima facie* a case of defamation.
8. Admittedly the accused petitioner in the capacity as Senior Office Bearer of a Public Sector Corporation has reported alleged the allotment of various construction contracts by the Works Minister claimed by the complainant/respondent to be referring to him, without tenders or following the codal procedures in violation of Rules and Regulations requesting the then Governor to constitute a Fact Finding Committee in the matter. Such report/allegations leveled by the accused petitioner herein indisputably is an accusation made to a lawful authority by the senior officer of the Corporation making the public conduct of the complainant/respondent herein the subject of comment for public good after having noticed certain acts of omission and commission committed in the running of the affairs of the Corporation as otherwise also every citizen has a right to comment on those acts of public men which concerns him as a citizen of the Country, if he does not make his commentary a cloak for *Malice and Slander*. Perusal of the record would reveal that the letter dated 21-06-2018 supra resulted into issuance of a Government Order No. 1690-GAD of 2018 dated 28-11-2018 whereby sanction came to be accorded to the Constitution of Fact Finding Committee comprising of Senior Officers of the Government for looking into the matters/acts of alleged omission and commission pointed out by the accused petitioner in the letter dated 21-06-2018 supra.

It is an admitted position of law that the expression, “good faith” and “public good” appearing in Exceptions to Section 499 are questions of facts and can be determined only during trial of the case and the burden of proving an Exception being always upon the accused.

Hereunder a reference to the Judgment of the Apex Court passed in case titled as **“S. Khushboo vs. Kanniammal” reported in 2010 (5) SCC 600** becomes imperative being relevant wherein at Para 44 and 45 following has been laid down:-

*“44....It is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the ‘freedom of speech and expression’ is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrate can proceed to take cognizance of the same. We must be mindful that the initiation of a criminal trial is a process which carries an implicit degree of coercion and it should not be triggered by false and frivolous complaints, amounting to harassment and humiliation to the accused.*

*45....Even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as ‘decency and morality’ among others, we must lay stress on the need to tolerate unpopular views in the socio-cultural space. The framers of our Constitution recognized the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a pre-condition for meaningful governance in the political sense, we must also promote a culture of open dialogue when it comes to societal attitudes”.*

A further reference to the Judgment of the Apex Court Judgment passed in **“Kartar Singh and Ors. vs. State of Punjab” reported in AIR 1956 SC 541** also would be advantageous wherein following has been noticed:-



*“50....Those who fill a public position must not be too thin skinned in reference to comment made upon them. Whoever fills a public position, renders himself open to attack. He must accept an attack as a necessary, though unpleasant, appendage to this office.”*

Having regard to the contents of the impugned complaint and the material attached thereto inasmuch as upon the legal principles supra against the accused petitioner, it can safely be said that the offence under Section 499 is not made out.

9. Having held the impugned complaint and material on record not constituting the offence of defamation against the petitioner, the impugned order dated 16-11-2018 passed by the Magistrate needs as well to be looked into. However, before testing the validity of the order, a reference hereunder to the legal principles laid down by the Apex Court in case titled as ***‘Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate and Ors. reported in (1998) 5 SCC 749*** also become necessary wherein at Para 28 following has been laid down:-

*“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit*

*answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”*

A further reference in regard to above to the Judgment of the Apex Court Judgment passed in **“*Mehmood ul Rehman vs. Khazir Mohammad Tunda and Ors. (2015) 12 SCC 420*”** is also important wherein at Paras 20, 21 and 22 of the Judgment following has been provided:-

*“20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Limited (supra), to set in motion the process of criminal law against a person is a serious matter.*

*21. Under Section 190(1)(b) of Cr.P.C., the Magistrate has the advantage of a police report and under Section 190(1)(c) of Cr.P.C., he has the information or knowledge of commission of an offence. But under Section 190(1)(a) of Cr.P.C., he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) of Cr.P.C. The complaint is simply to be rejected.*

*22. The steps taken by the Magistrate under Section 190(1)(a) Cr.P. C followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and 31 CRMC No.58/2019 the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is*

*required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.P.C, the High Court under Section 482 Cr.P.C is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”*

In view of the aforesaid principles and law looking to the order impugned, it is apparent that the Magistrate has exhibited lack of application of mind to the material on record and instead seemingly has approached very lightly and in a mechanical manner in the matter while passing the impugned order.

10. In view of what has been discussed and analyzed in the preceding paras, the inherent power of this Court is warranted to be exercised in view of the following principle of law laid down by the Apex Court in case titled as **“State of Haryana and Ors. vs. Bhajan Lal and Ors. reported in 1992 Supp (1) SCC 335:-**

*“1...Wherein the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety*

