

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**CRM(M) No. 272/2019
CrIM No. 647/2019**

Yashpal Sharma & Ors.

.....Appellant(s)/Petitioner(s)

Through: Mr. Mandeep Singh, Advocate

Vs

Rupali Sharma

..... Respondent(s)

Through: None

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
28.08.2024

Oral

1. The petitioner herein has invoked inherent power of this Court enshrined under Section 561-A Cr. P.C. (now 528 BNSS) for quashment of the complaint titled, '*Rupali Sharma vs. Naresh Sharma & Ors.*' pending before Judicial Magistrate, Samba along with order dated 13.02.2019 passed thereon.
2. The facts giving rise to filing of the instant petition would reveal that the respondent herein filed a petition under Section 12 of the Protection of Women From Domestic Violence Act, 2005 against the petitioners herein stating therein that the complainant-respondent herein got married to petitioner 3 herein on 28.02.2017 in accordance with Hindu rites and rituals and after the solemnization of the said marriage, the complainant-respondent herein started living with petitioner 3 herein at her matrimonial home situated at Village Jakh, Vijaypur Samba and that

while living with petitioner 3, rest of the petitioners including petitioner 3 herein started mistreating the complainant-respondent herein and in the process committed continuous domestic violence upon her.

3. In response to the said complaint filed by the petitioners herein thereto the accusation made in the complaint came to be controverted while leveling certain counter allegations upon her character alleging that the respondent-complainant has physical relations with one Ajay Kumar.
4. Feeling aggrieved of the said allegations leveled against the complainant-respondent herein by the petitioners herein in the reply filed to the complaint, the complainant-respondent herein filed a complaint under Section 499/500/34 RPC against the petitioners herein before the Judicial Magistrate, Samba on 13.02.2019 alleging therein that the petitioners herein have harmed and injured the reputation of the complainant-respondent herein and have thus committed the offences covered in the complaint.
5. The Magistrate upon entertaining the said complaint and after recording the statement of the complainant-respondent herein and one of her witnesses, proceeded to pass order dated 13.02.2019, whereby cognizance came to be taken besides directing summoning of the accused-petitioners herein.
6. The petitioners herein have maintained the instant petition *inter-alia* on the grounds that the allegations leveled against the complainant-respondent herein in the response filed by them to the petition filed by the respondent under the Act of 2005 do not constitute an offence of defamation in view of Eighth exception appended to Section 499 RPC

which provides that an accusation preferred in good faith to an authorized person is not defamation.

Heard learned counsel for the petitioners and perused the record.

7. Before proceeding to advert to the issues raised in the instant petition, it would be appropriate to refer to Section 499 RPC as also to the Eighth exception appended thereto here under:-

“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.”

Eighth 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.”

A plain reading of the aforesaid provisions postulates that an imputation made against another person which is intended by him to harm such other person or he knows or believes to be injurious to such person, constitutes an offence of defamation. It also emerge therefrom the reading of the provisions of Section 499 RPC supra that the defamation may be made in one or more ways itself either by spoken words, written words, by signs or by visible representations.

Thus what is necessary for constituting an offence of defamation is that the imputation must be made or published and must be made known to other person or persons. However it is provided in the Exceptions appended to Section 499 RPC that even if the imputations made satisfy all

the ingredients of provisions of Section 499 RPC, yet it may not constitute an offence under Section 499 RPC if it falls within one or more Exceptions appended to Section 499 RPC.

8. Reverting back to the case in hand, the petitioners are alleged to have questioned the character of the complainant-respondent herein by spoken words before the Magistrate as also in the reply filed to the complaint filed by the complainant-respondent herein under the Act 2005 against the petitioners.

A bare perusal of the complaint where under the instant petition has arisen would prima facie tend to show that the said reply referred in the complaint filed by the petitioner herein has formed the basis for the complainant-respondent herein for maintaining the complaint under Section 499 RPC against the accused-petitioners herein.

9. It is noteworthy that the application of Eighth Exception appended to Section 499 RPC involves determination of a question of fact which cannot be expected to be visualized by the trial court at the threshold stage of either taking cognizance of the offence or issuing process against the accused persons. In other words meaning that in case the complaint, the statement of the complainant and the witness appearing on behalf of the complainant at the time of filing of the complaint discloses that the imputation concerning the complainant harms the reputation of the complainant, the Magistrate would be justified in taking cognizance and issuing process against the accused persons and it is only thereafter, as the matter proceeds that an accused may establish that the imputation was made in good faith. The burden thus on the accused is not of the kind

which is on the complainant to prove his or her case, but is only to be proved by Preponderance of Probabilities. Therefore, whether the imputations are made in good faith or not cannot be determined by the Magistrate as has been provided in the preceding Paras at the threshold or by this Court in exercise of inherent power when this Court is called upon to exercise the same, as the said question as has been observed in the preceding paras and risking repetition is reiterated is factual in nature and character and it is for the trial court alone that can return a finding on the said factual issue after the parties would bring evidence on record. In short, the question whether the matter falls within Exception Eight appended to Section 499 RPC is not a threshold question.

10. Thus, having regard to the aforesaid position, the case set up by the petitioners herein that Eighth Exception appended to Section 499 RPC is attracted in the case pales into insignificance and as such, is held legally not sustainable at this stage.
11. Having held that the application of Eighth Exception appended to Section 499 RPC not sustainable at this stage, the next question that falls for consideration of this Court would be as to whether this Court in exercise of inherent power can determine the veracity of the allegations leveled in the impugned complaint filed by the complainant-respondent herein and scuttled the proceedings in the said complaint at the threshold in exercise thereof.

The position of law in this regard is no more *res integra* and stands settled by a series of judgments rendered by the Apex Court as well as this Court in this behalf which provides that a criminal proceeding ought not to be

scuttled in the initial stage and that quashment of the complaint should be an exception and a rarity than an ordinary rule. A reference in this regard is made to the judgment of the Apex Court passed in case titled as “Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and ors.” reported in (2021) 19 SCC 401.

12. For what has been observed, considered and analyzed above, this Court is not inclined to exercise inherent power in the instant case.
13. Resultantly the petition fails and is **dismissed**.

(Javed Iqbal Wani)
Judge

Jammu
28.08.2024
Neha-II

