

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

Reserved on: 03.06.2024
Pronounced on: 12.07.2024

CRM(M) No.310/2019

MANJU BHAT

... PETITIONER(S)

Through: - Mr. Anil Bhan, Sr. Advocate, with
Mr. Danish Majeed, Advocate, &
Mr. Bhat Shafi, Advocate.

Vs.

DR. AMIT WANCHOO

...RESPONDENT(S)

Through: - M/S. Sajad Sultan & Shahid Zamir,
Advocates.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged complaint filed by respondent against her alleging commission of offences under Section 406, 500, 501, 506, 326/511 and 109 RPC pending before the Court of Judicial Magistrate 1st Class (1st Additional Munsiff), Srinagar (hereinafter referred to as “the learned trial Magistrate”). Challenge has also been thrown to order dated 26.03.2019 passed by the learned trial Magistrate whereby the process has been issued against the petitioner.

2) It appears that the respondent has filed a complaint against the petitioner before the learned trial Magistrate alleging commission of offences under Section 406, 500,
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501, 506, 326/511 and 109 RPC. In the complaint it is alleged that the petitioner is legally wedded wife of the respondent and that their marriage had taken place on 27th November, 2016. Out of this wedlock, a child was born in October, 2017. According to the respondent/complainant, after some time a marital discord arose between the parties and the petitioner left the company of the respondent/complainant and went to Pune to reside with her parents. It has been alleged in the complaint that the petitioner has been attacking the reputation of the respondent by posting defamatory remarks and false allegations through print and social media. It has been further averred in the complaint that respondent is a well-known businessman and a social activist operating in Kashmir Valley and that the petitioner is indulging in malicious campaign against him so as to defame and shame him. It has been alleged in the complaint that while respondent was undergoing Fellowship Programme in Asian Global Institute HKU, the petitioner lodged a frivolous complaint with the said Institute, as a result of which the respondent had to un-necessarily confront disciplinary proceedings in the Institute. The complainant has annexed with the complaint various social media posts and news

clippings as well as copies of communications which, according to him, are defamatory and malicious in nature.

3) The learned trial Magistrate, after recording preliminary statement of the respondent, took cognizance of the complaint and vide impugned order dated 26.03.2019 issued process against the petitioner.

4) The petitioner has challenged the impugned complaint and the impugned order passed by the learned trial Magistrate on the grounds that from a perusal of the contents of the complaint no offence is made out against the petitioner. It has been further submitted that the petitioner resides in the State of Maharashtra, as such, the impugned complaint and the impugned order are without jurisdiction. It has also been contended that a similar complaint filed by the respondent against the petitioner has been dismissed by the learned Judicial Magistrate 1st Class (Forest Magistrate), Srinagar, in terms of order dated 16.05.2018, as such, second complaint making similar allegations is not maintainable. It has also been contended that the impugned complaint has been made by the respondent only with a view to harass the petitioner who is presently residing in the State of Maharashtra. It has also been contended that the impugned complaint has been made with a malicious

intention to coerce the petitioner to concede the divorce petition filed by respondent against the petitioner which is stated to be pending before the Court of Additional District Judge, Srinagar.

5) I have heard learned counsel for the parties and perused the impugned complaint, impugned order and the trial court record.

6) From a perusal of the impugned complaint, it is clear that there is a matrimonial dispute going on between the parties and in this regard, they are litigating before the Court. The trial court record shows that the learned trial Magistrate at the time of issuing process against the petitioner has recorded only preliminary statement of the complainant. Although it is recorded in the impugned order dated 26.03.2019 that the statement of one more witness has been recorded but a perusal of the statement of the said witness reveals that he has only identified the complainant and has not stated anything on merits of the complaint. A perusal of the impugned order dated 26.03.2019 reveals that it is nowhere mentioned as to which offences are, *prima facie*, made out against the petitioner. In this regard, it is to be noted that in the complaint respondent has alleged commission of offences under Section 406, 500, 501, 506,

326/511 and 109 RPC but the learned trial Magistrate has not stated as to which of these offences is made out against the petitioner. This clearly reflects mechanical functioning of the learned trial Magistrate.

7) The Supreme Court in the case of **Subramanian Swamy vs. Union of India**, (2016) 7 SCC 221, has emphasized that a heavy responsibility and duty lies on the Magistrate to find whether accused concerned is legally responsible for the offences charged for. The Supreme Court particularly made these observations with reference to complaints pertaining to the offence of defamation. Thus, while issuing a process in a criminal complaint against an accused, there has to be application of mind on the part of the Magistrate. It cannot be a casual or mechanical exercise, particularly in cases relating to defamation. The responsibility of a Magistrate to examine the material on record in the case of complaints alleging commission of offence of defamation is of a higher degree.

8) In the instant case, as already noted, perusal of the impugned complaint would reveal that there is a serious matrimonial dispute going on between the parties. Therefore, filing of complaint by respondent against the petitioner to wreak vengeance upon her cannot ruled out. In such

circumstances, it was incumbent upon the learned trial Magistrate to be more circumspect before issuing process against the petitioner. Instead of doing so, the learned trial Magistrate has merely on the basis of preliminary statement of the respondent/complainant proceeded to issue process against the petitioner who is residing at a far-off place.

9) In the aforesaid circumstances, before proceeding to issue process against the petitioner, it would have been more prudent for the learned trial Magistrate to undertake an investigation/enquiry in terms of Section 202 of the Cr. P. C with regard to truth or falsehood of the allegations made in the complaint. It is true that it is the discretion of the Magistrate to either proceed to issue process against the accused on the basis of the allegations made in the complaint and the preliminary evidence recorded or to postpone the issue of process and hold an enquiry in terms of Section 202 of the Cr. P. C but then such discretion has to be exercised in accordance with the settled principles of law and not in an arbitrary manner. It is also a fact that under Section 202 of J&K Cr. P. C, it is not incumbent upon the Magistrate to hold an enquiry even in a case where the accused resides beyond his territorial jurisdiction. In spite of this, having regard to the acrimonious matrimonial

relationship between the parties, the fact that the petitioner was living beyond the territorial jurisdiction of the learned trial Magistrate and the complainant had not produced any preliminary evidence excepting his own statement, this was a fit case where the learned trial Magistrate instead of issuing process against the petitioner should have resorted to enquiry/investigation in terms of Section 202 of the Cr. P. C so as to ascertain truth or falsehood of the complaint, which is mainly based upon social media posts, the authenticity whereof was required to be, prima facie, ascertained before proceeding against the petitioner.

10) For what has been discussed hereinbefore, it is clear that the learned trial Magistrate while passing the impugned order, whereby process has been issued against the petitioner, has acted in a mechanical manner, inasmuch as it is not mentioned in the impugned order as to which offence is made out against the petitioner and that he has on the basis of mere statement of the complainant without undertaking a proper enquiry with regard to truth or falsehood of the allegations made in the complaint proceeded to issue process against the petitioner. Apart from this, the learned trial Magistrate has not even adhered to the mandate of sub-section (1)(a) of Section 204 of the Cr. P. C which

provides that summons cannot be issued against the accused until a list of prosecution witnesses has been filed and in the instant case, no such list of prosecution witnesses is accompanying the impugned complaint.

11) For all the aforesaid reasons, the petition is allowed in terms of the following directions:

- (I) The impugned order dated 26.03.2019 passed by the learned trial Magistrate is set aside.
- (II) The learned trial Magistrate shall direct an enquiry/investigation to be conducted into the allegations made in the complaint in terms of Section 202 of the Cr. P. C whereafter he shall proceed further in the matter in accordance with law.
- (III) The learned trial Magistrate shall also summon the record of the complaint titled **“Dr. Amit Wanchoo vs. Manju Bhat”** decided by learned Judicial Magistrate 1st Class (Forest Magistrate), Srinagar, in terms of order dated 16.05.2018 and determine as to whether the impugned

complaint in the face of decision in the earlier complaint made by the learned Forest Magistrate, Srinagar, is maintainable.

12) Copy of this order be sent to the learned trial Magistrate for information and compliance.

(Sanjay Dhar)
Judge

Srinagar,
12.07.2024
“Bhat Altaf-Secy”

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

