

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

**AT JAMMU**

*(Through Virtual Mode)*

CRM(M) No. 731/2023

*Reserved on: 13.09.2024*

*Pronounced on: 25.10.2024*

Kuldeep Raj Dubey Age 67 years  
S/o Sh. Bihari Lal  
R/o H.No.18, Mohinder Nagar,  
Canal Road, Jammu.

...Petitioner/Appellant(s)

Through: Mr. Abhimanyu Sharma, Advocate.

**Vs.**

Puneet Sharma  
S/o Shiv Kumar Sharma  
R/o H.No.51-P, Channi Himmat, Jammu.

...Respondent(s)

Through: Mr. Nirmal Kotwal, Advocate.

**CORAM:**

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

**JUDGEMENT**

1. In the instant petition, the petitioner herein has invoked the inherent power of this Court saved by Section 482 CrPC 1973 for quashing complaint titled as "**Puneet Sharma Vs. Kuldeep Raj Dubey**" (for short the impugned complaint) pending before the court of Special Mobile Magistrate Jammu (for short the Magistrate) filed by respondent herein against the petitioner herein for commission of offences under Section 499 IPC punishable under Section 500 including the order of cognizance dated 20.04.2023 (for short the impugned order).
2. Before advertng to the petition in hand, a brief resume of the facts becomes imperative hereunder: -
  - The petitioner herein in the year 2018 filed an application under Section 156(3) CrPC before the court of Chief Judicial Magistrate, Samba, seeking a direction upon the SHO Police Station Bari Brahmana for registering an FIR against the respondent herein for commission of offences under Sections 447, 427, 504 and 506 IPC, whereupon a direction came to be passed by the said court and consequently FIR

No. 0061/2018 came to be registered against the respondent herein on 11.04.2018 which FIR came be challenged by respondent herein before this court in CRM(M) No. 268/2018 which after its consideration came to be allowed vide judgement dated 16.02.2013 and impugned FIR came to be quashed.

- On 10.04.2023 the respondent herein filed the impugned complaint against the petitioner herein stating therein that upon registration of the FIR supra on 11.04.2018 a big contingent of police came to his house situated at Channi Himma, Jammu, in broad day light and took him to the police station and that during the search of his residential address the police party asked number of people about the location of his house and that the said police party had informed the people of the locality that an FIR has been registered against him the respondent herein upon the complaint of the petitioner herein stating further therein the said complaint that he owned respect and regard in his friend circle, relations and amongst inhabitants of locality of Channi Himmat Jammu and that during the said search operation conducted by the police party his image, reputation and dignity got lowered down in the estimation of his friends, relations and public in general of Channi Himmat locality on the basis of a false and frivolous complaint of the petitioner herein while stating further in the complaint that quashment of FIR dated 11.04.2018 by this court clearly indicated that the allegations in the complaint lodged by the petitioner herein culminating in the said FIR was false and since the contents of the complaint pursuant to which the FIR No. 0061/2018 dated 11.04.2018 was registered against him was per-se defamatory.
- The respondent herein being aware of the delay in filing of the impugned complaint, averred in para 9 in the complaint as follows: -

“that delay in filing the complaint is because of the reason that complainant had been approaching police station Bari Brahamana

for taking action against the accused under section 500 RPC/IPC, but the police did not take any action for the respondent that the FIR stands already registered against the complainant on the complaint of the accused. It is submitted that now Hon'ble High Court has quashed the FIR based on the complaint of the accused vide judgement dated 16.02.2023. It is further submitted that there is no intentional or deliberate delay on the part of the complainant to approach the Hon'ble court for taking action against the accused under section 499 read with section 500 IPC.

3. Upon institution of the impugned complaint by the respondent herein, preliminary statement of respondent herein and one independent witness came to be recorded and the Magistrate took cognizance while in issuing process against the petitioner herein for his appearance vide impugned order dated 20.04.2023.
4. The petitioner herein besides urging grounds on the merits in the instant petition has questioned the impugned complaint and the impugned order on the grounds that same has been filed beyond the period of limitation prescribed under section 468 CrPC as such, taking of cognizance of the same is barred in law.
5. **Objections** to the petition have been filed by respondent herein wherein while opposing the petition reliance has been placed on Section 470 and 473 CrPC and its applicability stating that the delay in filing the impugned complaint was justified as the complainant respondent herein was pursuing CRM(M) No. 268/2018 before this court wherein the respondent herein have had challenged in FIR supra.

**Heard counsel for the parties and perused the record.**

6. The above narrated facts which triggered in filing of the impugned complaint filed by respondent herein against the petitioner herein are not in dispute.
7. It is significant to note here that Section 499 IPC defines defamation and Section 500 IPC thereof provides for its punishment. For the purpose of convenience Section 500 IPC being relevant herein is reproduced hereunder:

**500. Punishment for defamation.—**

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

8. Chapter XXXVI CrPC deals with limitation for taking cognizance of certain offences and for the purpose of said chapter, Section 467 of the Code defines expression “period of limitation” to mean period specified under Section 468 for taking cognizance of an offences, whereas Section 469 provides for commencement of period of limitation.
9. Before proceeding further in the matter a reference to Sections 468 CrPC and 469 CrPC also becomes imperative here under: -

**Section 468 Bar to taking cognizance after lapse of the period of limitation-**

(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.

**Section 469. Commencement of the period of limitation.**

(1) The period of limitation, in relation to an offender, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

A plain reading of the aforesaid provisions would tend to show that the period of limitation for taking cognizance of a complaint for commission of offences punishable under Section 500 IPC 3 years in terms of 468(2)(c) CrPC and the said period of limitation would

commence from the date of offence and once the period of limitation expires, a court is barred from taking cognizance of a complaint alleging commission of offences under Section 500 IPC.

In regard to the aforesaid provisions of law, here a reference to the judgement of the Apex court passed in case titled as “**Surinder Mohan Vikal Vs. Ascharaj Lal Chopra**” reported in **1978(2) SCC 403** would advantageous wherein at para 6 following has been held: -

6.....We are constrained to say the question of "cause of action could not really arise in this as the controversy relates to the commission of an offence. As has been stated, sub-section (1) of section 469 of the Code specifically provides that the period of limitation prescribed in section 468, in relation to an offender, shall commence (inter alia) on the date the offence.

10. Reverting back to the case in hand, as per the averments made in the impugned complaint the respondents herein alleged that offence of defamation took place on 11.04.2018 i.e. on the date of registration of FIR supra therefore in terms of Section 468(2)(c) CrPC, period of limitation commenced on 11.04.2018, however, record reveals that impugned complaint came to be filed on 10.04.2023 i.e. exactly after five years as respondent herein has given twofold explanations for the said delay, firstly, that he-the respondent herein had been approaching the police station concerned for registration of FIR which the police did not and secondly, that he-the respondent had questioned the FIR supra before this court which came to be quashed on 16.02.2023 in CRM(M) No 268/2018, as such, therefore the period from the date of filing of the petition supra before this court, till the date it was allowed on 16.02.2023 has to be excluded in terms of Section 470 CrPC.
11. In terms of Section 199 CrPC police as well as a court is barred from taking cognizance of offences punishable under chapter XXI of the IPC except upon a complaint made by a person aggrieved by the offence. In regard to said section 199 CrPC the Apex Court in case titled as “**Subramanian Swamy Vs. Union of India**” reported in **2016 (7) SCC 221** at para 207 has observed as under: -

207. Another aspect required to be addressed pertains to issue of summons. Section 199 CrPC envisages filing of a complaint in court. In

case of criminal defamation neither can any FIR be filed nor can any direction be issued under Section 156(3) CrPC.....

From the plain reading of Section 199 Cr.PC supra coupled with the law laid down by the Apex court in **Subramanian** judgement supra it is clear that police cannot register an FIR for commission of offence under Section 500 IPC. Therefore, the explanation for the delay offered by the respondent herein to have approached the police station to act against the petitioner herein falls to the ground.

12. It is significant to mention here that Section 470 CrPC provides for exclusion of time in certain cases and a reference to said Section 470 CrPC herein as well becomes imperative hereunder having regard to the facts and circumstances of the case: -

**Section 470**

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

As appears from above provision of Section 470(1) in computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a court of first instance or in a court of appeal or revision against the offender, shall be excluded provided that prosecution relates to the same facts and is prosecuted in a good faith in a court which from defect of jurisdiction or other cause of like nature is unable to entertain it.

13. Insofar as the invoking of exclusion clause contained in Section 470 CrPC supra by the respondents herein is concerned same is also of no help to the respondent herein inasmuch as the plea of having been prosecuting with due diligence another prosecution as the same would only be attracted where the prosecution relates to the same facts and is being prosecuted in good faith in a court which from defect of jurisdiction or other cause of like nature, is unable to entertain it.

In the present case the litigation pending between the parties was with respect to quashing of FIR dated 11.04.2018 registered upon a complaint filed by the petitioner herein against the respondent herein. The said litigation cannot by any sense of imagination be said to be on the same facts as the impugned complaint, in that, the subject matter though may be connected yet was not actually and factually based on the same facts. Therefore the second justification explanation offered by the respondent herein is also not tenable.

14. The respondent herein has lastly taken shelter under Section 473 CrPc which also for the sake of brevity and convenience is extracted and reproduced hereunder: -

**473. Extension of period of limitation in certain cases-**

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

As appears from a plain reading of Section 479 supra, it provides for extension of period of limitation, if the court is satisfied on the facts and in the circumstances of a case that the delay has been properly explained or that it is necessary so to do in the interest of justice.

Taking recourse to Section 473 supra at this stage of proceedings in view of this court is impermissible as the application of Section 473 supra ought have been sought by the respondent herein at the time of filing of impugned complaint.

15. Further what is evidenced from the impugned order dated 20.04.2023 is that the despite having pleaded in the complaint that there has been delay in filing the impugned complaint, the Magistrate has not applied judicial mind at all to the question of limitation at the pre cognizance stage and has in a routine manner issued process against the petitioner herein and such failure would render the proceedings without jurisdiction in view of the bar contained under section 468 CrPC. Here a reference to the judgement of the Apex court passed in case titled as **“M/s Pepsi Food Ltd. And Anr. Vs Special Judicial Magistrate**

**and Ors”**. reported in **1998 (5) SCC 749** would be appropriate wherein at para 28 following has been held: -

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.

16. It is worthwhile to note here that the judgement referred and relied upon by counsel for the respondent herein has been delivered in a different sets of facts and as such, do not lend any support to his case being not applicable thereof.

17. At the end it seemingly appears to this court that filing of the impugned complaint is ill conceived attempt to wreck vengeance by the respondent herein upon the petitioner herein as the FIR supra came to be registered against the respondent herein upon a complaint filed by the petitioner herein and from the contents of the impugned complaint it is evident that the police were merely acting in the line of duty upon registration of said FIR, a process i.e. standard procedure in any investigation. The fact that locals became aware about the registration of said FIR during the search is a natural consequence of law enforcement agency and its presence in a residential area cannot per-se be construed to be as a defamatory conduct as is alleged by the respondent herein. The respondent herein instead of addressing the matter through proper legal course, has chosen to misuse the judicial process by filing impugned complaint thereby undermining the sanctity of legal system and such conduct the not only burden the works with unnecessary litigation, but also diverts the attention from the core issues that require adjudication.

18. In the overall view of the matter and in the interest of justice inasmuch as what has been observed, considered and analyzed hereinabove, it is deemed proper not to allow the proceedings in the impugned complaint more so when six years have elapsed from commission of the alleged offence as there must and has to be an end to litigation at some point of time and if the respondent herein had



failed to appreciate the starting point of limitation, there would be nothing now for him to explain the delay when he stands confronted that such period commenced from the date of making the alleged defamatory statement. Nothing in the impugned complaint or else in the judgement dated 16.02.2023 passed in CRM(M) No. 268/2018 suggest that the interest of justice would require an old matter to be raked up for the sake of satisfying private ego and vengeance.

19. Viewed thus, the petition succeeds as a consequence whereof the impugned complaint titled “**Puneet Sharma Vs. Kuldeep Raj Dubey**” along with impugned order dated 20.04.2023 are liable to be quashed and are accordingly quashed.

20. Disposed of.

(**JAVED IQBAL WANI**)  
**JUDGE**

**SRINAGAR**

25.10.2024

*Ishaq*

*Whether the order is speaking? Yes*

*Whether the order is reportable? Yes*