IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on:29.10.2025
Judgment delivered on:19.01.2026

\+ **<u>CRL.M.C. 4105/2025 & CRL.M.A. 17787/2025, CRL.M.A. 26097/2025</u>**

ANIL KHURANA ..... Petitioner

versus

GOVT. OF NCT OF DELHI & ANR. ..... Respondents

<u>Advocates who appeared in this case:</u>

For the Petitioner : Mr. Saurabh Jha and Ms. Ragini Kapoor, Advocates.

For the Respondents : Mr. Sunil Kumar Gautam, APP for the State.

Mr. Gautam Khazanchi and Ms. Suruchi Jaiswal, Advocates for R-2.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

<u>JUDGMENT</u>

1. The present petition is filed against the order dated 24.05.2024 (hereafter '**impugned order**') passed by the learned Additional

Sessions Judge ('**ASJ**'), Saket Courts, Delhi in Criminal Revision No. 143/2023.

2. By the impugned order, the learned ASJ set aside the order dated 25.11.2022 whereby the learned Magistrate while noting that *prima facie* there existed sufficient grounds to proceed for the offence under Section 500 of the Indian Penal Code, 1860 ('**IPC**') had summoned Respondent No. 2.

3. Concisely put, the petitioner and Respondent No. 2 are stated to be brothers and the petitioner, stated to be a citizen of USA, used to reside on the ground floor of H. No. 10/21, East Patel Nagar, Delhi whenever he visited India for holidays. On 05.07.2007, FIR No. 388/2007 was registered at Police Station Patel Nagar for offences under Sections 341/323 of the IPC against the petitioner on a complaint given by Respondent No. 2 whereby it was alleged that the petitioner physically assaulted Respondent No. 2 over a dispute pertaining to the staircase in the house. It was further alleged that the petitioner gave multiple blows and kicks to Respondent No. 2 thereby causing him injuries. Meanwhile a settlement was purportedly executed between the parties alongwith an affidavit by Respondent No. 2 and thereafter the petitioner filed a quashing petition before this Court *vide* CRL. M.C. 3962/2008. Respondent No. 2 was also impleaded in the said petition.

4. This Court *vide* order dated 30.08.2012 declined to quash the said FIR noting the stand taken by Respondent No. 2 in his reply

affidavit whereby he stated that the deed of settlement and affidavit were forged and fabricated and that Respondent No. 2 was made to sign the same under misrepresentation.

5. Subsequently, the trial concluded and *vide* judgment dated 28.02.2019, the petitioner was acquitted of the charged offences in view of the contradictions in the version of the prosecution. The petitioner thereafter filed the present complaint being CT Cases 5623/2019 under Sections 499/500 of the IPC read with Sections 193/196/199/209 of the IPC. In the complaint, the petitioner alleged that Respondent No. 2 falsely implicated the petitioner in the FIR No. 388/2007 by making false allegations of hurt and wrongful restraint in which the petitioner was subsequently acquitted. The petitioner alleged that due to the said implication, the behaviour of the relatives, neighbours and his friends have changed. The petitioner further alleged that during the pendency of the trial in FIR No. 388/2007, Respondent No. 2 made baseless statements against the petitioner in relation to forgery and fabrication of documents pertaining to the deed of settlement to the friends and family members of the petitioner and that the same are defamatory in nature. The complaint also reflects three instances where the petitioner was allegedly looked down upon by his family/friends in relation to forgery and fabrication of documents in relation to the deed of settlement. It is the case of the petitioner that the institution of a false case coupled with the baseless statements made by Respondent No.2 of the alleged forgery and

fabrication of documents have caused damage to the reputation of the petitioner.

6. By order dated 25.11.2022, the learned Magistrate issued summons to Respondent No. 2 while specifically noting that there existed *prima facie* sufficient grounds to proceed against Respondent No. 2.

7. By the impugned order, the learned ASJ set aside the order of summoning passed by the learned Magistrate dated 25.11.2022. It was noted that the case of Respondent No. 2 was covered under Exceptions 8 and 9 to Section 499 of the IPC. It was noted that even otherwise, the allegations levelled by the petitioner against Respondent No. 2 did not amount to the offence of defamation. It was noted that from the evidence tendered by the petitioner, it could not be ascertained that Respondent No. 2 had any intention to defame the petitioner. Aggrieved by the same, the petitioner has preferred the present petition.

8. The learned counsel for the petitioner submitted that the learned ASJ erred in setting aside the summoning order dated 25.11.2022 passed by the learned Magistrate. He submitted that false allegations were made in the FIR No. 388/2007 against the petitioner and that the petitioner was also subsequently acquitted in the said FIR. He further submitted that Respondent No. 2, during the course of the trial, had made certain statements to the friends and family of the petitioner in relation to forgery and fabrication of the documents that had the

impact of lowering the reputation of the petitioner in the eyes of such friends and family members.

9. He submitted that learned ASJ while considering the revision petition was only required to assess if there existed any perversity or impropriety in the order passed by the learned Magistrate. He submitted that the learned ASJ ought not to have gone into the defences of Section 499 of the IPC while considering a challenge to the summoning order while exercising revisional jurisdiction. He submitted that the role of the learned ASJ was limited to ascertaining the propriety of the summoning order and the defences *qua* good faith is a subject matter of trial and was not required to be looked into.

10. He submitted that even during the course of the trial in FIR No. 388/2007, Respondent No. 2 had made contradictory statements as a result of which the petitioner was acquitted. He submitted that the statements made by Respondent No. 2 to the friends and family members of the petitioner in relation to forgery lowered the reputation of the petitioner thereby attracting the offence under Section 499 of the IPC.

11. The learned counsel for Respondent No. 2 submitted that the impugned order is well reasoned and warrants no interference by this Court. He submitted that Exceptions 8 and 9 to Section 499 of the IPC make it amply clear that accusation preferred in good faith to authorised person and imputation made in good faith by person for protection of his or other's interest does not amount to defamation. He

submitted that the stance of Respondent No. 2 even at the time when the quashing was preferred by the petitioner before this Court being CRL. M.C. 3962/2008 was that the signatures of Respondent No.2 was obtained under misrepresentation. He submitted that the said stance taken by Respondent No. 2 before this Court cannot be considered to be defamatory. He submitted that assuming but not admitting that the case of the petitioner is true, yet Respondent No. 2 had only narrated those statements which were also recorded in the order dated 30.08.2012 passed by this Court while dismissing the quashing petition filed by the petitioner being CRL. M.C. 3962/2008. He submitted that the same cannot be construed to be defamatory. He consequently submitted that the present petition is liable to be dismissed.

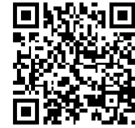
<u>Analysis</u>

12. In the present case, the petitioner filed the present complaint alleging that an FIR No. 388/2007 was registered at the instance of Respondent No.2 in which the petitioner was ultimately acquitted *vide* judgment dated 28.02.2019. During the pendency of the trial, the record would reveal that a purported settlement was entered into between the parties as a consequence of which the petitioner preferred a petition seeking quashing of the FIR No. 388/2007 being CRL. M.C. 3962/2008 before this Court in which Respondent No. 2 was also impleaded. Respondent No.2, in his reply affidavit, stated that he never intended to execute any alleged deed of settlement and that he

was made to sign the document on misrepresentation from the brother-in-law of the parties. Considering the same, this Court declined to quash the FIR and noted that disputed question of fact arose for determination. Subsequently, post the conclusion of the trial, the petitioner was acquitted in the said FIR *vide* judgment dated 28.02.2019 in view of the contradictions in the case of the prosecution.

13. The petitioner thereafter filed the present complaint raising two-fold arguments: *firstly,* false complaint was given by Respondent No. 2 which led to registration of FIR against the petitioner (being FIR No. 388/2007) in which the petitioner was ultimately acquitted which lowered the reputation of the petitioner; *secondly,* the petitioner mentioned three specific instances wherein he alleged that his close family friends casted aspersions on him in relation to forgery of documents related to deed of settlement.

14. It is the case of the petitioner that during the pendency of the trial, Respondent No. 2 made statements to certain close friends and family members of the parties in relation to forgery of the documents. It is contended that the same lowered the reputation of the petitioner in the eyes of the close friends and family members. At the time of pre-summoning evidence, the petitioner examined two witnesses who were the petitioner's family friends. The said witnesses deposed that they met Respondent No. 2 during the year 2017-2018, and they came to know about the fact that some forged documents were furnished by the petitioner before this Court. The said witnesses deposed that upon



learning the same, the image of petitioner was lowered in their eyes. It is the case of the petitioner that due to the said baseless averments of Respondent No. 2, he had observed a change in behaviour of his family friends.

15. The learned counsel for the petitioner emphasised that the learned ASJ, while exercising revisional jurisdiction, was only required to ascertain whether there was any illegality in the summoning order and not venture into the defences as enshrined under Section 499 of the IPC. It was argued that whether the acts of Respondent No. 2 fell under the exceptions is an exercise that should not have been resorted to while considering a challenge to the summoning order as the same was a subject matter of trial. *In arguendo,* it was sought to be impressed upon this Court that the acts of Respondent No. 2 even otherwise amounted to defamation.

16. The chief ground raised on behalf of the petitioner is that the learned ASJ erred in venturing to consider the defences to defamation while considering a challenge to the summoning order. It has voraciously been contended that the learned ASJ, in exercise of revisional jurisdiction, could not have looked into the exceptions to Section 499 of the IPC or ascertained good faith on the part of Respondent No. 2. This Court does not find itself in agreement with the said argument raised by the petitioner. The learned ASJ while exercising revisional jurisdiction was not proscribed from considering the propriety of the summoning order. In doing so, the learned ASJ

was not precluded from considering whether a complete defence to Section 499 of the IPC was made out from the material on record.

17. In the case of ***Jawaharlal Darda v. Manoharrao Ganpatrao Kapsikar* : (1998) 4 SCC 112**, the learned Magistrate had issued process against five accused persons who were editors and proprietors of the newspaper *"Daily Lokmath"* in relation to a news article published in the said newspaper. Upon a challenge to the same, the learned Sessions Court, in exercise of revisional power, had quashed the process as the Sessions Court was of the opinion that by publishing the news item, none of the accused had committed any offence. Thereafter, the order passed by the learned Sessions Court was challenged by the complainant before the High Court. Subsequently, the High Court while setting aside the order passed by the learned Sessions Court noted that when the Magistrate had found a *prima facie* case against the accused and deemed it fit to issue process, the Sessions Court was not correct in setting aside the order in exercise of revisional power. The Hon'ble Apex Court while restoring the order passed by the Sessions Court noted as follows:

> *"5. It is quite apparent that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary enquiry made by the Government. If the accused bona fide believing the version of the Minister to be true published the report in good faith it cannot be said that they intended to harm the reputation of the complainant. It was a report in respect of public conduct of public servants who were entrusted with public funds intended to be used for public good. Thus the facts and circumstances of the case disclose that the news items were*

> *published for public good. All these aspects have been overlooked by the High Court."*

18. As is evident from a reading of paragraph 5 of the decision of the Hon'ble Apex Court in ***Jawaharlal Darda v. Manoharrao Ganpatrao Kapsikar*** *(supra)* as reproduced *supra*, the Hon'ble Apex Court restored the order of the Sessions Court considering that the accused published the report in good faith.

19. Subsequently, in the case of ***Rajendra Kumar Sitaram Pande v. Uttam*** **: (1999) 3 SCC 134,** a challenge was made by the accused persons therein to the judgment passed by the Hon'ble Bombay High Court where the High Court concluded that the order of the Magistrate issuing process was only an interlocutory order and was not amenable to the jurisdiction of the Sessions Court under Section 397 of the CrPC. In the said case, the complainant alleged the accused persons had made a false representation to the Treasury Officer making false allegations against the complainant that he had come to the office in a drunken state and had abused the Treasury Officer thereby committing the offence under Section 500 of the IPC. The Magistrate therein postponed the issuance of process and called for a report by the Treasury Officer under Section 202(1) of the CrPC. Upon the receipt of the report, the Magistrate noted that sufficient material existed for issuance of process. The Sessions Court thereafter, on a challenge to the order passed by the Magistrate issuing process, noted that the Magistrate having directed an enquiry under Section 202 on receipt of said enquiry report was not justified in discarding the same. Further,

the Sessions Court considered the enquiry report from the Treasury Officer and concluded that the case was covered by Exception 8 to Section 499 of the IPC. The learned Sessions Court further noted that the issuance of process was an abuse of process and set aside the order. Upon a challenge to the same, the High Court set aside the order passed by the Sessions Court noting that the issuance of process being an interlocutory order, the Sessions Court ought not to have interfered with the same under Section 397 of the CrPC. The High Court, however, observed that it would be open for the Magistrate to recall the issuance of process if satisfied.

The Hon'ble Apex Court, while finding that the order directing issuance of process is an *intermediate* or *quasi-final* order thereby permitting exercise of revisional jurisdiction under Section 397 of the CrPC, and confirming the order passed by the Sessions Court taking into account the fact that Exception 8 to Section 499 of the IPC would be applicable noted as follows:

> *"7. ……The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence under Section 500 or not. Section 499 of the Penal Code, 1860 defines the offence of defamation and Section 500 provides the punishment for such offence. Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject-matter of accusation. The report of the Treasury Officer clearly indicates that pursuant to the report made by the accused persons against the complainant, a departmental enquiry had been initiated and the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused the Treasury*

> *Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by Exception 8 to Section 499 of the Penal Code, 1860. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for quashing the order of issuance of process and the proceedings itself. We, therefore, set aside the impugned order of the High Court and confirm the order of the learned Sessions Judge and quash the criminal proceeding itself. This appeal is allowed."*

20. While the decisions in ***Jawaharlal Darda v. Manoharrao Ganpatrao Kapsikar*** *(supra)* and ***Rajendra Kumar Sitaram Pande v. Uttam*** *(supra)* were rendered as per the facts of the cases, recently, the Hon'ble Apex Court, in the case of ***Iveco Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya*** **: (2024) 2 SCC 86**, discussed the aspects to be satisfied at the stage of summoning and clarified that the Magistrate is not precluded from considering, at the pre-trial stage, if at all any exceptions to the offence of defamation are made out from the material on record. The relevant portion of the judgment is reproduced hereunder:

> *"60. What the law imposes on the Magistrate as a requirement is that he is bound to consider only such of the materials that are brought before him in terms of Sections 200 and 202 as well as any applicable provision of a statute, and what is imposed as a restriction by law on him is that he is precluded from considering any material not brought on the record in a manner permitted by the legal process. As a logical corollary to the above proposition, what follows is that the Magistrate while deciding whether to issue process is entitled to form a view looking into the materials before him.* ***If, however, such materials themselves disclose a complete defence under any of the Exceptions, nothing prevents the***

Magistrate upon application of judicial mind to accord the benefit of such Exception to prevent a frivolous complaint from triggering an unnecessary trial.

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62. In the context of a complaint of defamation, at the stage the Magistrate proceeds to issue process, he has to form his opinion based on the allegations in the complaint and other material (obtained through the process referred to in Section 200/Section 202) as to whether "sufficient ground for proceeding" exists as distinguished from "sufficient ground for conviction", which has to be left for determination at the trial and not at the stage when process is issued. Although there is nothing in the law which in express terms mandates the Magistrate to consider whether any of the Exceptions to Section 499IPC is attracted, there is no bar either. After all, what is "excepted" cannot amount to defamation on the very terms of the provision. *We do realise that more often than not, it would be difficult to form an opinion that an Exception is attracted at that juncture because neither a complaint for defamation (which is not a regular phenomenon in the criminal courts) is likely to be drafted with contents, nor are statements likely to be made on oath and evidence adduced, giving an escape route to the accused at the threshold.* ***However, we hasten to reiterate that it is not the law that the Magistrate is in any manner precluded from considering if at all any of the Exceptions is attracted in a given case; the Magistrate is under no fetter from so considering, more so because being someone who is legally trained, it is expected that while issuing process he would have a clear idea of what constitutes defamation. If, in the unlikely event, the contents of the complaint and the supporting statements on oath as well as reports of investigation/inquiry reveal a complete defence under any of the Exceptions to Section 499IPC, the Magistrate, upon due application of judicial mind, would be justified to dismiss the complaint on such ground and it would not amount to an act in excess of jurisdiction if such dismissal has the support of reasons.***

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66. …At the stage, when the trial court made the summoning order, two aspects were required to be satisfied : (1) whether the uncontroverted allegations as made in the petition of complaint read with the examination of the complainant, prima facie, tend

> ***to suggest an offence having been committed, and (2) whether it is expedient and in the interest of justice to proceed."***

(emphasis supplied)

21. Upon a consideration of the aforementioned, it is clear that the learned ASJ while exercising revisional jurisdiction was not precluded from ascertaining whether the uncontroverted allegations made in the complaint alongwith the examination of the complainant *prima facie* suggested that an offence had been committed and if at all it was expedient in the interest of justice to proceed. Consequently, while determining whether sufficient grounds existed for proceeding against Respondent No. 2, Section 499 of the IPC ought to have been read along with the exceptions that form an integral part of the provision and categorically lay down the acts that do not amount to defamation. Consequently, the learned ASJ, was not in excess of jurisdiction while ascertaining if at all any *exceptions* were attracted and whether the case of the petitioner was *excepted* and if the contents of the complaint and supporting statements revealed a complete defence under any of the Exceptions to Section 499 of the IPC.

22. In that light, this Court turns its gaze to the facts of the present case. From a perusal of the impugned order, in the opinion of this Court, the learned ASJ rightly took into account the complaint as well as the other documents on record to ascertain the propriety of the summoning order. As rightly appreciated by the learned ASJ, the intention to cause harm is *sine qua non* to constitute an offence under

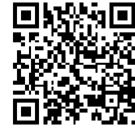
Section 499 of the IPC and the same has to be gathered from a perusal of the case in its entirety.

23. The case of the petitioner, as noted above, is that Respondent No. 2 made false allegations in FIR No. 388/2007 and the petitioner was ultimately acquitted in the said FIR, however, the false allegations in the said FIR lowered his reputation thereby attracting the offence under Section 499 of the IPC. As duly appreciated by the learned ASJ, merely because the petitioner was acquitted does not indicate that the intention of Respondent No. 2 was *malafide.* It is apposite to mention at this juncture that mere acquittal in a criminal proceeding does not *ipso facto* lead to the conclusion that the FIR contained false allegations. At the cost of iterating the axiomatic, in a criminal proceeding, the prosecution is tasked to prove the allegation beyond all reasonable doubts. The said standard is onerous and the prosecution's failure to meet the said standard could stem from lack of concrete evidence or gaps in the case of the prosecution and not necessarily because the allegations *per se* are false. An acquittal, even if honourable, does not tantamount to suggest that a false case was instituted or the accusations were false.

24. In the present case as well, the petitioner was acquitted in the FIR 388/2007 noting that the prosecution had failed to prove its case beyond reasonable doubt and not because the allegations levelled by Respondent No. 2 were patently false.

25. The other allegation made by the petitioner is that during the pendency of the trial, Respondent No. 2 made certain statements to the friends of the petitioner in relation to forgery of documents pertaining to the deed of settlement which were false and that the same had the impact of damaging the petitioner's reputation. As noted above, during the pre-summoning evidence, two family friends of the petitioner were examined who deposed that during the year 2017-2018 they came to know that forged documents were furnished by the petitioner before the High Court. They further deposed that from Respondent No. 2, they came to know that certain forged documents were furnished by the petitioner before the High Court and that upon learning the same, the image of the petitioner fell in their eyes.

26. It is pertinent to note that as per the eighth exception any accusation preferred in good faith to an authorised person with respect to the subject matter of accusation does not amount to defamation. As is evident from a perusal of the record, Respondent No.2 even at the stage of quashing petition preferred before this Court stated that the deed of settlement and other documents were forged and fabricated and that his signatures were obtained under misrepresentation by his brother-in-law. The lawful authority in the present case would be the Court, and as noted above, the case of Respondent No. 2 was consistent on the aspect that his signatures were obtained under misrepresentation. Even if the case of the petitioner is taken at the highest that Respondent No. 2 told the petitioner's friends that certain forged documents were furnished by the petitioner or that Respondent



No. 2's signatures were obtained under misrepresentation, it is pertinent to note that the same stance was also maintained by Respondent No. 2 before the Court at the time when quashing petition being CRL. M.C. 3962/2008 was filed before this Court. The same squarely falls within Exception 8 to Section 499 of the IPC and does not amount to defamation.

27. As rightly noted by the learned ASJ, even otherwise, the petitioner has not made any allegation that would indicate that Respondent No. 2 made any imputation against the petitioner with the intention to defame the petitioner. Upon a holistic consideration of the material in record, this Court does not find any infirmity in the impugned order and the same cannot be faulted with.

28. For the foregoing reasons, the present petition has to fail and the same is accordingly dismissed. Pending applications also stand disposed of.

AMIT MAHAJAN, J

JANUARY 19, 2026/*DU*