



2025:DHC:1210



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision:14th February,2025*

+ **CRL.M.C. 2553/2021**

JITENDER KUMAR GARG

S/o Late Shri O.P. Gupta,
R/o A-1, Panchsheel Garden,
Naveen Shahdara,
Delhi-110032

.....Petitioner

Through: Mr. Santosh Chauriha, Advocate.

versus

1. **GURMEET SINGH**

S/o Shri Jagjit Singh,
R/o A-48, Panchsheel Garden,
Naveen Shahdara,
Delhi-110032

.....Respondent No. 1

2. **ANIL TANDON**

S/o Shri S.P. Tandon,
R/o A-17, Panchsheel Garden,
Naveen Shahdara,
Delhi-110032

.....Respondent No. 2

3. **ROHIT SUJI**

S/o Shri Ravneek Suji,
R/o A-33, Panchsheel Garden,
Naveen Shahdara,
Delhi-110032

.....Respondent No. 3

4. **STATE NCT OF DELHI**

Through its Standing Counsel

.....Respondent No. 4



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Through: Mr. Prashant Sharma & Mr. Lokender
Singh Rathore, Advocates.

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CRL.M.C. 2554/2021

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CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Petitions under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C., 1973"*) have been filed on behalf of the Petitioner to challenge the Order of learned ASJ dated 20.07.2019 *vide* which the Order of learned ACMM dated 22.09.2018 dismissing the Complaint of the Petitioner under Section 200 of Cr.P.C, 1973 for offences under Section 499/500/502/504/506/34 of the Indian Penal Code, 1860 read with Section 66 of the Information Technology Act, 2000, was upheld.
2. The Petitioner a practising Advocate and a permanent resident of Delhi, had filed a Complaint under Section 200 of Cr.P.C, 1973 against the Respondents before the Court of learned ACMM, Delhi.
3. The *brief facts* were that he was one of the members of Panchsheel Resident Welfare Society (Regd.) of which he was elected as Vice President in the elections held on 27.04.2012. The tenure of the Management Committee was for 7 years. However, according to the Complainant, despite the Resolution of the Society, the Respondents started manipulating things and illegally held elections of the Society on 10.04.2016 i.e. after 4 years instead of seven years.
4. The Petitioner wrote a Complaint to the Registrar of Societies on 01.07.2016 in regard to illegal conduct of elections by the Society. The Registrar (Society) sent a letter dated 02.08.2016 to the Respondents seeking



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a clarification. A Reply was given by the Respondents stating that the Petitioner does not hold any post in the Managing Committee of the Society, which however, was incorrect to their knowledge.

5. A Complaint was given to the SHO and a Civil Suit was also filed. The Complainant asserted that Accused/Respondent No.3-Sh. Sanjeev Panchaal and Accused/Respondent No.5-Shri Sushil Soni have admitted their guilt in the Civil Suit and an MoU was executed in a Civil Suit for Defamation, pursuant to which the Complainant had withdrawn his case against these two persons, while it was continued against other defendants.

6. The Petitioner filed his Complaint under Section 200 of Cr.P.C., 1973 wherein averments were made that the Respondents had held the election illegally and unauthorisedly on 10.04.2016 and posted the list of newly elected Management Committee on the Whatsapp Group of the Society without informing the Complainant. When he opposed the same on the Whatsapp Group itself, the Respondents started defaming the Complainant by writing derogatory remarks against him on the Whatsapp Group which were read and reacted by other members of the Whatsapp Group with remarks which were derogatory and defamatory, which led to the lowering of reputation of the Petitioner in the eyes of the residents and Public.

7. The Petitioner/Complainant examined *CW1-HC Vipul Nain*, who brought the Register of Complaint regarding Complaint of Anil Tandon dated 25.06.2016, *CW2-Shri Mewa Ram, LDC from SDM Office* produced the original letters 15.04.2008, 30.04.2012 and 01.07.2016. *CW3-the Complainant, Jitender Kumar Garg* deposed that he came to know about the false Complaint dated 25.06.2016 made by the Respondents alleging that he



was threatening them for appointing him as President of RWA. Statements of two other witnesses namely *Naresh Sharma* and *Kishore Bansal* were also taken on record.

8. The learned ACMM referred to the testimony of the Complainant and other witnesses, and noted some of their comments which were reproduced by the Petitioner in the preliminary deposition as “*Jeetu ki be sir per ki bate hoti hair. Bansal ke alawa sar uske opposition me the*” “*chup chap so jao nahi to jeetu aa jaega, court kya kya decide karega, usko bolo ek baar pathrao bhi karwa de Tangon G ke yahan*” and many other defamatory remarks. He observed that none of the offences for which the Complaint had been filed was attracted as the comments relied upon by the Petitioner did not get covered in the definition of defamation.

9. It was further held that there was no evidence in the entire deposition of *CW4-Shri Ashok Bansal* that the moral or intellectual character of the Complainant was lowered in his estimation in any manner, because of what was written in the Whatsapp Group. **It was thus, concluded that there was no material to proceed against the Respondents and the Complaint was dismissed.**

10. Learned ASJ in his Order dated 20.07.2019 concurred with the observations of the learned ACMM and dismissed the Revision Petition. Aggrieved by the said dismissal *vide* Order dated 20.07.2019, the present Petition has been filed.

11. *The grounds of challenge* are that the learned ASJ has failed to consider that for taking cognizance of the offence, the Trial Court is required



to only look into the evidence of the Complainant's witnesses and not to draw its own presumptions. The statements of the witnesses recorded on behalf of the Petitioner have not been considered, but the Magistrate has stood as a Defence Counsel of the Respondent to nip in bud the evidence of the witnesses and has recorded prima facie findings without considering the presumption of probability.

12. The *Reply* given by them to Registrar of Societies and the Complaint duly signed by them as made to the Police, reflect their sole intention to defame the status of the Petitioner who was holding the position of Vice President. The admissions made by the Respondent in Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 filed by them in the Civil Suit, also denotes the entire endeavour and sole design of the Respondents to insult the Petitioner.

13. In Civil Suit No.2857/2016 titled *Jitender Kumar Garg vs. Anil Tandon* for Defamation pending in the Court of ADJ, Respondent No.3-Sh. Sanjeev Panchaal and Respondent No.5-Shri Sushil Soni have admitted their guilt to which due weight has not been given by the learned Trial Court. The prayer is, therefore, made that the impugned Order be set aside.

14. *Learned Counsel on behalf of the Respondents* have contended that from the entire WhatsApp chat, it can be easily seen that there was no derogatory remark made against the Petitioner.

15. The learned ACMM has rightly observed that there was no merit in the Complaint which Order has been rightly upheld by the learned ASJ.

16. **Submissions heard and record perused.**

17. The basic averments as can be deciphered from the Complaint filed



on behalf of the Petitioner, is that he was elected as the Vice President of Panchsheel Residents' Welfare Society in the elections held on 27.04.2012. According to him, the elections of the Society were held after 4 years on 10.04.2016, allegedly in contravention of the Resolution of the Society when it was agreed that the next elections would be held after 7 years. According to the Complainant, he is still holding the post of officiating Vice President after the resignation of the President R.C. Mehra on 24.04.2016. According to him, the elections had been conducted in an illegal manner which was an endeavour by unwarranted persons to control the Society against which the Complainant had put a stern check.

18. It is evident from his averments that the Petitioner who was disgruntled by the elections held in 2016, had made various Complaints about the alleged acts of the elected Members. The grievance about the Elections against the Resolution of the Society could have been addressed only by a Civil Suit. He made a Complaint to Registrar of Societies and also filed a Civil Suit.

19. According to him, after the elections in April, 2016, the Managing Committee had put defamatory remarks/comments about him on Whatsapp Group on which all the Members of the Society were a member, with a motive of causing undue harassment and mental agony as well as to attack his reputation. The messages which according to him, were offensive are:

- (i) *jinke ghar sheeshe ke hotey hai, voh doosron ke ghar pe pathar nahe feka karte JAANI*
- (ii) *Jeetu ki be sir per ki bate hoti hair. Bansal ke alawa sar uske opposition me the*



- (iii) *chup chap so jao nahi to jeetu aa jaega, court kya kya decide karega, usko bolo ek baar pathrao bhi karwa de Tandan G ke yhaa*
- (iv) *Baki Sanjiv aur Rohit ki baat nahi samjha toh usse bada bewaqoof nahi. Let him do whatever. Sab ek saath hai toh no tension.*

20. The *Whatsapp chat* has been exhibited as CW3/A.

21. According to **Salmond & Heuston** on the Law of Torts, 20th Edn.7 define a defamatory statement as under :

*“A defamatory statement is one which has a tendency to **injure the reputation** of the person to whom it refers; which tends to **lower him in the estimation of right thinking members of society** generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, or disesteem....”*

22. **Justice Cave** in the case of *Scott vs. Sampson* QBD1882 defined it as a “*false statement made by a man to his discredit*” which has applied in the case of *Bata India Ltd. vs. A.M. Turaz & Ors.* 2013 (53) PTC 586 and *Pandey Surindra Nath Sinha vs. Bageshwari Pd.* AIR 1961 Pat. 164 (1882) QBD 491.

23. The intrinsic facet of “*Defamation*” is harm to “*Reputation*” or lowering the estimation of a person in public domain. This makes it pertinent to understand what constitutes reputation.

24. In *Manisha Koirala vs. Shashi Lal Nair & Ors*, 2003 (2) Bom CR 136, the term “reputation” was held to be that allusions which clearly exposit the innate universal value of reputation and how it is a cherished



constituent of life and not limited or restricted by time. The right to reputation in its vital aspect, is not concerned with fame or distinction. It has regard, not to intellectual or other special acquirements, but to that repute which is slowly built up by integrity, honourable conduct, and rightful living. *It is, therefore, reputation alone that is vulnerable; character needs no adventitious support.*

25. Furthermore, the offence of defamation involves any statement which as a tendency to injure the reputation of the person or lower him in estimation of members of the Society resulting in loss of reputation and is consequently defamatory.

26. *In this context, the comments made by the Respondents may thus, be considered.* The comments, as reproduced above, by no stretch of interpretation, can be termed as defaming a person or lowering his estimation in the eyes of a person who reads or listens to these remarks. The remarks to which the Complainant has referred, may not be the most appropriate way of addressing a person or may border to be offensive towards him, but definitely such remarks cannot be considered as bringing down the estimation of the Complainant in the public.

27. The learned ASJ in the impugned Order has rightly observed that the contents of Whatapp conversation, Ex.CW3/A were not intended to cause harm to the reputation of the Complainant and such words were no defamatory in nature. Furthermore, it has been rightly observed that a reply was filed before the Registrar of Societies stating that the Complainant is not holding any post in the Executive Committee of the Resident's Welfare Society but these are also not sufficient to constitute the offence under



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Section 506 of the Indian Penal Code, 1860. The two Respondents i.e. Sh. Sanjeev Panchaal and Shri Sushil Soni may have signed a MoU with the Complainant in the Civil Suit, but that does not imply that this MoU establishes that the Complainant has been defamed. The remarks were essentially targeted towards the conduct of the Petitioner in writing the Complaints and filing of Civil Suit against the Respondents, and in no manner can be defined as derogatory or defamatory.

28. Thus, the Complaint under Section 200 of Cr.P.C, 1973 has been rightly dismissed.

29. The impugned Order does not merit any interference and the present Petition is accordingly dismissed.

30. The Petitions are accordingly disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

FEBRUARY 14, 2025

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