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

Case No: CRMC No.459/2017, IA No.1/2017,
CRMC No. 254/2017, IA No. 1/2017
CRMC No. 255/2017, IA No. 1/2017
CRMC No. 256/2017, IA No. 1/2017

Reserved on: 03.08.2026
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Whether the operative part or full Judgment is pronounced ***:Full***

Satish Koul

……Petitioner(s)…..

Through: Mr. Sunil Sethi, Sr.Advocate with
Mr. Navyug Sethi, Advocate

v/s

Amardeep Singh (in CRMC 459/2017) and Rakesh Zutshi (in CRMC No. 254/2017, CRMC No. 255/2017, CRMC No. 256/2017)

Through: Mr. Kumar Love, Advocate in CRMC No. 459/2017
Mr. Sanjay Raina, Advocate in CRMC No. 255/2017

……Respondent(s)…

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.

JUDGMENT

1. These three petitions, i.e., CRMC Nos. 254/2017, 255/2017 and 256/2017, have been filed by the petitioner against his co-brother, Rakesh Zutshi, seeking quashing of three complaints filed by respondent-Rakesh Zutshi on the same date, i.e. 04.02.2016, titled

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"*Rakesh Zutshi v. Satish Koul"*. The fourth petition, being CRMC No. 459/2017, has been filed by the petitioner-Satish Koul seeking quashing of the complaint titled "*Amardeep Singh v. Satish Koul"*, filed by respondent Amardeep Singh, as well as the order dated 02.05.2017, whereby the process has been issued against the petitioner for commission of offences under Sections 500/506 RPC**.**

2. Record depicts that the two separate complaints filed by Rakesh Zutshi and Amardeep Singh respectively arise out of the civil suit instituted by the petitioner, Satish Koul, against them and others before the Patiala House Court, Delhi. Since the complaints emanate from the same set of facts and circumstances, these petitions were, therefore, taken up together for consideration**.**

3. In **CRMC No. 255/2017**, the petitioner has assailed the order dated 30.09.2016, whereby the learned Judicial Magistrate, Sub Judge (hereinafter referred to as the "trial court"), referred the complaint filed by Rakesh Zutshi for inquiry under Section 202 CrPC to the SHO of the concerned Police Station**.**

4. Whereas, in **CRMC No. 459/2017**, the petitioner has impugned the order dated 02.05.2017, whereby, in the complaint titled "*Amardeep Singh v. Satish Koul'*, the learned trial Court issued the process against the petitioner for commission of offences punishable under Sections 500/506 RPC**.**

5. In order to assail the aforesaid orders, the petitioner has narrated the chronology of events commencing from the date of his marriage and his visit to the paternal home of his wife, extending up to the year

2013. It is alleged by the petitioner that respondent Rakesh Zutshi repeatedly demanded money from him, which the petitioner claims to have paid in order to maintain peace and harmony with his wife. It is further submitted that, despite acceding to all the alleged illegal demands of respondent-Rakesh Zutshi, who was assisted by his associates, including respondent-Amardeep Singh, the petitioner was ultimately constrained to institute a civil suit against respondents-Rakesh Zutshi, Amardeep Singh and some others, seeking to restrain them from tarnishing his image on social media and through other means. It is averred that, in response to the said civil suit instituted by the petitioner, both respondents, namely, Rakesh Zutshi and Amardeep Singh, filed separate complaints, as referred to hereinabove, against the petitioner**.**

6. In the complaint filed by respondent-Amardeep Singh, it has been stated that, on account of certain business transactions, he had instituted a complaint under Section 138 of the Negotiable Instruments Act before the learned Munsiff, Jammu, against Priya Zutshi (wife of Rakesh Zutshi). It is alleged that, in connection with the said proceedings, Praitbha, wife of the petitioner, threatened him with dire consequences. The complainant-Amardeep Singh further alleged that the petitioner had described him as a “contract killer”, “vagabond”, “dacoit”, “don” and “kidnapper”, besides using other allegedly derogatory expressions which, according to him, were intended to malign his character and reputation. More particularly, it has been alleged that, in paragraphs 25, 26, 27, 29, 38, 40, 48, 54, 56, 62 and 64 of the civil suit, the complainant was portrayed as a

criminal, blackmailer, robber and contract killer and as a person having connections with contract killers.

7. In the complaint filed by respondent-Rakesh Zutshi against the petitioner, it has been stated that he is a religious person and that, although the accused Satish Koul had married in the year 2007 but had no child, he proposed to adopt the son of the respondent, which proposal was declined by him. It is further alleged that, thereafter, the petitioner misguided his wife and succeeded in having the respondent ousted from Gurgaon. According to the respondent, after returning to Jammu, he started a fresh business through his hard work, earned a substantial income, deposited money for his children and also sent miscellaneous expenses to his wife. He further requested his wife to return to Jammu along with the children, but she did not accede to his request.

8. It is further stated that the respondent instituted an application seeking custody of his children before the Matrimonial Court, Jammu, in which summons was issued to his wife. Thereafter, according to the respondent, the petitioner instituted a false and frivolous suit not only against him but also against his sister and maternal uncle before the Patiala House Courts, Delhi, wherein he levelled vulgar, baseless, humiliating, defamatory and unparliamentary allegations against the respondent and his family members. It is alleged that the petitioner described the respondent as a “contract killer”, “vagabond”, “dacoit” and “don” and, in particular, alleged that the respondent was a militant and had links with terrorist organizations. The respondent has referred to paragraphs 23, 26, 27, 29, 31, 48, 56, 62, 64 and 68 of the said suit

to contend that his reputation was lowered and he was defamed on account of the false and frivolous allegations levelled against him by the petitioner.

9. Notably, in both complaints preferred by the respondents, only the statements of the respective complainants were recorded, and no witness was examined before the learned Trial Court to corroborate the allegations made therein. As noticed hereinabove, vide order dated 02.05.2017, the learned trial Court, in the complaint filed by respondent Amardeep Singh, has issued process against the petitioner. However, in the complaint filed by respondent-Rakesh Zutshi, process has not been issued; rather, an inquiry under Section 202 CrPC has been directed to be conducted by the SHO, Police Station Palam Vihar, Gurgaon, Haryana**.**

10. Mr. Sethi, learned Senior Counsel appearing for the petitioner, has argued that both the complaints filed by respondents Rakesh Zutshi and Amardeep Singh are nothing but abuse of the process of law. He has further argued that the suit in which the alleged defamatory imputations were made was instituted before the Patiala House Courts, Delhi, and it is not the case of either of the respondents that the alleged defamatory contents were published in Jammu or communicated to any of their friends or relatives residing in Jammu. It is, therefore, contended that the Courts at Jammu would have no territorial jurisdiction to entertain the complaints. Learned Senior Counsel has further argued that the essential ingredients constituting the offence are conspicuously absent from the complaints filed by the respondents.

11. *Per contra*, Mr. Kumar Love, learned counsel appearing for the respondent in **CRMC No. 459/2017**, has submitted that, in light of the defamatory averments made in the suit instituted by the petitioner, the ingredients of the alleged offences were clearly made out against the petitioner, and it was on this basis that the learned trial Court, upon consideration of the material on record, issued process against the petitioner.

12. Mr. Sanjay Raina, learned counsel appearing for the respondent in **CRMC No. 255/2017**, has submitted that no process has yet been issued against the petitioner and that the learned trial Court has merely postponed the issuance of process in order to ascertain the truthfulness or otherwise of the allegations contained in the complaint. It is, therefore, contended that the present petition is premature and does not call for interference at this stage. He has further submitted that the suit instituted by the petitioner already stands dismissed.

13. Heard learned counsel appearing for the parties and perused the record.

14. The relevant paragraphs of the respective suits, containing the alleged defamatory statements, are extracted hereunder:-

> "**23**. That on the denial, the defendant no. 2 with the mother of defendant no.1 taken the banking kit in their possession which was having all the banking details to which complainant strongly opposed and was set to lodge police complaint as it was enough of illegal activities of the defendants."
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> **25**.That after joining of the conversation of the defendant no.1 by the defendant no. 3, 4 and 5; the defendant no. 5 said "I already told you that I will take care of you why you are calling police" on which the complainant said that "You are not the police and let me lodge police complaint and you have no right to come to my place this way and dictate me as to what I am supposed to do and what not". On this defendant no. 5 said that "meet Mr. Mohd. Arif and Mr. Ashok Kumar" i.e. defendant no. 3 and 4. "we are bigger than the police and powerful other than anyone in the city and Rakesh is the leader of us and you can't even imagine as to what we can do with you and your wife. So from now never ever think to involve

police or any third person between us otherwise no one could even identify your body".

26. That the present complainant victim was greatly terrified as in front of him, the actual criminals were sitting and seeing no option, the complainant said that "I am sorry, please never ever touch me or my wife. I am not going to involve any third person ever again but please do not harm us in any manner whatsoever."

27. That on this the defendant no. 1 started laughing and taken the gold chain of the complainant wife and of Rs. 30000/- cash which was only available cash at that time in the home and left the place with defendant nos. 2,3,4 and 5.

29. That during the continuation of the visits, the defendant no. 4 along with defendant no. 1 came to the office of the complainant and said that they are needing some money which the complainant will have to pay to which the complainant denied. After denial of the complainant, the defendant no. 4 said that "If you wish your peaceful life, you have only option to pay the money of Rs.1 lakh a month to defendant no. 1. If you fail to meet this demand, even for once, will ensure that nobody can even find you or your wife." That since the complainant is a medical professional and never come across this such people, so the complainant got afraid and requested that he is not that big man to pay Rs. 1 lakh a month but despite this, the complainant will try to pay the good amount a month but please don't invite the family of the complainant in this mess and from now onwards the complainant started paying a sum of Rs.40000 to 50000 a month. Sometimes the installments could reach to even Rs. 70000/- and sometimes it was only for Rs.30000/-.

31. That on the request of the complaint the in-laws of the complain ant i.e. family member of Pratibha said that defendant No.1 is actually very notorious and very demanding person and they are also fed up of him. They can't even lodge the complaint against the defendant No.1 as he is having strong connections with a terrorist organization known as Al-Qaida.

38. That the defendant no. 1 in conspiracy with defendant no. 3,4 and 5 came to the residence of the complainant and demanded the sum of Rs.75000/- for which the complainant denied as the complainant was having no money at that time. They said that since the complainant has denied from meeting the demand raised by defendant no. 1,3,4 and 5, the complainant will have to pay for this.

40. That after this injury from the defendant no. 1,3,4 and 5 to the complainant wife, the defendant no. 4 and 1 said that the complainant from next time must think again and again before denying to meet the demands of the defendants.

48. That in the year of 2010, defendant no. 1 and 4 in conspiracy with defendant no. 5 and mother of defendant no. 1 put a ransom of Rs.3 lakhs for which the complainant had no option but to pay.

54. That in the year of 2012, the defendant no. 1 again came to the residence of the complainant with his wife and children along with defendant no. 4 and demanded the money in addition to the monthly installments which the complainant was paying every month to the defendants just for the sake of living of the complainant and his wife.

56. That the defendant no. 1 and 4 were in hurry so they did not wait rather they forcefully broke the almirah and looted the jewellery of Rs.17 lakhs (approximately) and left the residence of the complainant with the warning that the complainant must take care of the wife and kid of the defendant till the defendant no. 1 comes back.

62. That on 25th January, 2014, after all efforts, the complainant could not arrange the money and then the defendant no. 1 made a call to the complainant and made the complainant talk to a person who was claiming himself a contract killer and said that defendant no. 1 in conspiracy with defendant no. 2,3,4 and 5 have already given the contract to him and if the sum of Rs. 50 lakhs instead of Rs. 25 lakhs is not paid immediately, he will kill the wife of the complainant, also the complainant.

64. That on lot of begging, the said contract killer given back phone to the defendant no. 1 who said that only one condition he will not kill the complainant or his wife that the complainant must keep on paying the monthly expenses as the complainant agreed to pay years back along with expenses of his wife along with educational expenses to his daughter in addition to this the complainant will also have to bear all the expenses of the son of the defendant no. 1.

68. That the defendants also threatening the complainant that if the complainant does not execute the documents in front of the registrar, the defendant No.1 in conspiracy with 2,3,4 and 5 will kill the complaint and his wife and thereby show that both have committed suicide and execute these documents in favour of the defendants."

15. A perusal of the averments made in the aforesaid paragraphs reveals that the petitioner has levelled serious allegations against both the respondents.

16. In the complaint filed by respondent Amardeep Singh, process has been issued against the petitioner for commission of offences punishable under Sections 500/506 RPC. It would be appropriate to reproduce Section 499 RPC as under:-

> **'S. 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 excepted, to defame that person."

17. Respondent Amardeep Singh has examined himself as a witness in support of the complaint and, in his statement, has simply alleged that the petitioner levelled false allegations against him. He has stated that he received summons from the Patiala House Court, Delhi, and came to know that the petitioner had instituted a suit against his brother-in-

law, sister-in-law and mother-in-law and had also arrayed him as a party therein. It is further stated that the petitioner had levelled false and frivolous allegations against him despite there being no relationship between the petitioner and the respondent.

18. However, neither in the complaint nor in his preliminary statement has the complainant-respondent asserted that the copy of the said suit, allegedly containing defamatory statements, was received by or disclosed to any person other than the complainant himself. Although the respondent has alleged in his complaint that the petitioner had maligned his character in society and in his business circle, no witness has been cited or examined to substantiate the said allegation. It is a settled position of law that the offense of defamation is not attracted unless the defamatory matter is published and brought to the knowledge of a third party; merely transmitting defamatory material to the person concerned, without publication to others, does not constitute defamation. Be that as it may, the suit containing the alleged imputations was filed, and in the absence of any averment or material establishing publication of the allegedly defamatory content at Jammu, no part of the alleged offense can be said to have been committed within the local limits of the territorial jurisdiction of the learned trial court at Jammu. Thus, the trial court lacked the territorial jurisdiction as well to entertain the complaint at Jammu.

19. Moreso, no specific allegation has been made to substantiate the commission of an offence punishable under Section 506 RPC.

20. In terms of Section 177 of the Cr.P.C., every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose

jurisdiction it was committed. Further, Section 179 provides that when a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence shall be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued. In the present case, this Court could have directed the trial court to return the complaint for its presentation before the competent Court having jurisdiction to try the offence, but as this Court has already arrived at the conclusion that no offence under Sections 500 RPC is made out, this Court has not deemed it proper to exercise the option of directing the Trial Court to return the complaint to the respondent-complainant for presentation before the Court having competent jurisdiction.

21. In "**P.R Ramakrishnan v. Subbaramma Sastrigal And Another", 1986 SCC ONLINE KER 309,** the High Court of Kerala has held as under:

> 6. The next question is about publication of the imputation. It is contended that there is no publication. To attract the definition of the *offence* of *defamation* as contained in S. 499 of the I.P.C, the imputation should have been made or published "whoever makes or publishes any imputation" are the relevant words employed in the section. **The word "makes" is intended to supplement the sense of "publishes". Those words conjunctively connote "to make public". It is settled proposition that there is no publication if the libellor merely communicates his libel to the person defamed.**

(emphasis added)

In "**re Bhulliram Jalam Vs. null**", **AIR 1962 MADHYA PRADESH 382**, the Madhya Pradesh High Court has held as under:

> "5. In order to sustain a conviction under section 500, I.P.C. it is necessary that there must be publication, learned counsel for the appellant lays a great deal of stress on the expression "makes or publishes" and urges that as soon as the imputation concerning the complainant was 'made' intending to harm or knowing or having reason to believe that it would harm his reputation the maker committed the offence punishable under section 500, I.P.C. The gist of the offence of defamation lies in the dissemination of the harmful imputation. When a defamatory statement is published, it is not only the publisher, but also the maker, who becomes responsible and it is in that context that the word "makes" is used in section 499, I.P.C. **It is of the essence that in order to constitute the offence of defamation it must be communicated to a third person because what is intended by the imputation is to arouse the hostility of others. If a person merely writes defamatory words and keeps the writing with himself, the offence is not made out. Likewise, if the libeller merely communicates the libel to the person defamed it does not constitute an offence under the said section although it may amount to an insult and may be punishable as such.** The question whether the libel in fact has been communicated to a third person is material. It is not enough that the libeller posted it to a third person. The English law is different."
>
> (emphasis added)

22. In view of the foregoing discussion, this Court is of the considered view that no offence punishable under Sections 500/506 RPC is made out against the petitioner. Accordingly, the impugned order dated 02.05.2017, as well as the proceedings arising out of the complaint titled "*Amardeep Singh v. Satish Koul"*, are hereby quashed**. CRMC No. 459/2017** is **allowed**.

23. In **CRMC No. 255/2017.** So far as the complaint filed by Rakesh Zutshi against the petitioner for commission of offences punishable under Sections 500/506 RPC is concerned, the learned trial Court has merely postponed the issuance of process in order to ascertain the truthfulness or otherwise of the allegations contained in the complaint, and no process has, in fact, been issued against the petitioner. However, in Ground-3 of the petition, it has been stated that a plain

reading of the order dated 30.09.2016 passed by the learned Magistrate, whereby the petitioner was directed to be summoned, shows that no reasons have been recorded for issuance of summons. Similar averments have been made in Ground-12 of the petition, asserting that the issuance of process against the petitioner is wholly illegal and unwarranted. Since no process has actually been issued against the petitioner and the matter is still at the stage of inquiry under Section 202 CrPC, the present petition is premature. Accordingly, **CRMC No. 255/2017 is dismissed**.

24. In **CRMC No. 254/2017**, the petitioner has assailed the order dated 30.09.2016, whereby the complaint has been referred for inquiry under Section 202 CrPC to the SHO concerned for the purpose of ascertaining the truthfulness or otherwise of the allegations contained therein. In this petition also, the petitioner has raised various grounds challenging the said order. Grounds Nos. 3, 5 and 9, which are relevant for the present controversy, are extracted hereunder:-

> "3. **Because the plain reading of the order dated 30.09.2016 passed by the Magistrate directing to issue of summons to the accused for their appearance shows that no reasons have been given for issuing the summons and hence the order suffers from non application of mind.** In this connection reference may be made to the decision of Hon'ble Supreme Court in the case of Pepsi Foods Ltd. Vs. Special Judicial Magistrate reported in 91998) 5 SCC 749 wherein para 28 held
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> > "28. that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set in motion as a matter of course. 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. The High Court failed to appreciate that the magistrate in this case did not seem to have applied his mind and hence the complaint and the process issued have to be quashed.

> **5**. Because all the allegations in the impugned complaint even if they are taken at their face value and accepted in its entirety do not constitute any offence. **Thus the complaint filed by the respondent is an abuse of process of law and the petitioner is unnecessarily harassed and prima facie the complaint is frivolous, vexatious and oppressive and the ends of justice will not be met if the complaint and the process issued by the Magistrate are quashed in exercise of the High Court inherent powers under Section 561-A of the Code.**
>
> **9**. That viewed from any angle, **the complaint impugned and the process issued thereupon is totally illegal and unwarranted** as such the proceedings in the complaint are required to be quashed."

25. In the present case also, no process has been issued against the petitioner, and the complaint has merely been referred for inquiry under Section 202 CrPC. The present petition is, therefore, premature and does not warrant interference at this stage. The Inquiry Officer may or may not submit a report in favour of the petitioner. Accordingly, the present petition is **dismissed**, with liberty to the petitioner to approach the Court afresh, if so advised, in the event the concerned SHO submits a report against him indicating commission of the alleged offences.

26. In **CRMC No. 256/2017**, the petitioner has assailed the order dated 30.09.2016, whereby the complaint has been referred to the SHO of the concerned Police Station for inquiry under Section 202 CrPC. The grounds urged by the petitioner for quashing the aforesaid order, particularly Grounds Nos. 3, 5 and 9, are extracted hereunder:-

> "**3**. **Because the plaint reading of the order dated 30.09.2016 passed by the Magistrate directing to issue of summons to the accused for their appearance shows that no reasons have been given for issuing the summons and hence the order suffers from non application of mind.** In this connection reference may be made to the decision of Hon'ble Supreme Court in the case of Pepsi Foods Ltd. Vs. Special

Judicial Magistrate reported in 91998) 5 SCC 749 wherein para 28 held

> "28. that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set in motion as a matter of course. 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. The High Court failed to appreciate that the magistrate in this case did not seem to have applied his mind and hence the complaint and the process issued have to be quashed.
>
> **5**. Because all the allegations in the impugned complaint even if they are taken at their face value and accepted in its entirety do not constitute any offence. **Thus the complaint filed by the respondent is an abuse of process of law and the petitioner is unnecessarily harassed and prima facie the complaint is frivolous, vexatious and oppressive and <u>the ends of justice will not be met if the complaint and the process issued by the Magistrate are quashed in exercise of the High Court inherent powers under Section 561-A of the Code</u>**.
>
> **9**. **That viewed from any angle, the complaint impugned and the process issued thereupon is totally illegal and unwarranted as such the proceedings in the complaint are required to be quashed**."

27. In the present complaint, which is the subject matter of the instant petition, no process has yet been issued against the petitioner. As such, the present petition is premature and does not warrant interference at this stage. Accordingly, the petition is **dismissed**, with liberty to the petitioner to approach the Court afresh, if so advised, in the event the concerned SHO submits a report against the petitioner indicating commission of the alleged offences.

28. **Disposed** of as above.

(Rajnesh Oswal)
Judge

<u>Jammu</u>
29.08.2026
Madan Verma-Secy

Whether order is speaking? **Yes.**
Whether order is reportable**?** **Yes.**