

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.7399 OF 2022****ORDER:**

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioner-sole accused to quash the proceedings against him in C.C.No.1753 of 2022, taken cognizance and pending before on the file of the III Additional Chief Metropolitan Magistrate at Nampally. The offences alleged against the petitioner are under Sections 211, 499 and 500 of Indian Penal Code, 1860(for short "IPC").

2. As seen from the complaint, the allegation of the 2nd respondent is that a complaint was earlier filed by the petitioner herein against him for the offence under Section 354 and 354-D of IPC. The said case vide C.C.No.1948 of 2015 ended in acquittal vide judgment dated 26.09.2018 on the file of learned III Additional Chief Metropolitan Magistrate. The learned Magistrate found that the victim who is petitioner herein could not be examined and evidence of the other witnesses was of no consequence and for the said reasons acquitted the 2nd respondent.

3. The present complaint was filed on the ground that a false complaint was made and the 2nd respondent had to undergo the order of a criminal trial on the basis of such false complaint which was made deliberately and for the reason of such false charge, his reputation was lowered in the society.

4. The learned magistrate having considered the sworn statement, has taken cognizance of the offence under Section 499 and 500 of IPC.

5. To attract an offence under Section 499 of IPC there should be words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person.

6. Exception 8 of Section 499 of IPC reads as follows:

"Accusation preferred in good faith to authorised person. — It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation."

7. The acquittal of accused in a criminal case would not entitle the said accused to prosecute the complainant unless there are specific reasons of intentionally making a false complaint ensuring the prosecution of such person. In the present case, the acquittal was recorded on the basis of non-examination of victim who is

petitioner herein. When the acquittal was recorded not on the merits of the case but failure of the prosecution to examine the victim, will not in any manner entitle the accused to criminally prosecute the de-facto complainant therein for defamation. Further the complaint of petitioner falls within the exception 8 of 499 IPC.

8. Further, the said imputation or allegation was made in the year 2015. According to the learned counsel appearing for petitioner, the complaint itself is barred by limitation under Section 468 of Cr.P.C. Counsel relied on the judgment of Supreme Court in ***Mrs Sarah Mathew v. State(Government of 'NCT' Delhi)***¹.

9. As seen from the record, no reasons are given by the learned magistrate to take cognizance after the period of limitation since the punishment prescribed under Section 500 of IPC is two years and in accordance with 468(3) of Cr.P.C. the limitation is 3 years. The present complaint was filed in the year 2021 and the case is barred by limitation. There are no reasons given under Section 473 of Cr.P.C. by the learned magistrate to extend the limitation in this case. For the reasons of no offence being made out on the facts of

¹ AIR 2014 SC 448

the case and also on the ground of the limitation, petitioner succeeds in the present application.

10. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner in C.C.No.1753 of 2022 on the file of III Additional Chief Judicial Magistrate at Nampally, are hereby quashed.

Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 09.01.2023
plp

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