

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. WRIT PETITION NO. 241 OF 2009

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| 1. Dr. R. P. Agarwal, Age 75 yrs. |) |
| Occ. Pediatrician, Chairman |) |
| R/o. D/32, Venus Co-op.Hsg.Society Ltd, |) |
| Dr. R. G. Thadani Marg, Worli, |) |
| Mumbai -400 018 |) |
| |) |
| 2. Mr. P.C. Gupta, Age 68 yrs. |) |
| Occ. Business, Ex-Honourary Secretary |) |
| (between 2005 to 28.10.2007) |) |
| R/o. F/53, Venus Co-op.Hsg.Society Ltd, |) |
| Dr. R. G. Thadani Marg, Worli,Mumbai-18 |) |
| |) |
| 3. Mr. S.K. Grover, Age 69 yrs. |) |
| Occ. Business, Ex-Hon. Joint Secretary |) |
| R/o. A/24, Venus Co-op.Hsg.Society Ltd, |) |
| Dr. R. G. Thadani Marg, Worli, |) |
| Mumbai - 400 018 |) |
| |) |
| 4. Mr. R. J. Wadhani, Age 45 yrs. |)... Petitioners/ |
| Occ. Business, Ex-Managing Committee |) Org. Accused |
| Member, (from Jan.2006 to Nov.2007) |) Nos.1 to 4. |
| R/o. B/32, Venus Co-op.Hsg. |) |
| Society Ltd,Dr. R. G. Thadani Marg, |) |
| Worli, Mumbai - 400 018 |) |

V/s.

- | | |
|-------------------------------|------------------|
| 1. The State of Maharashtra |)...Respondents. |
| 2. Mr. Rajan Alimchandani |) Respondent-1 |
| 47/B, Venus Co-op.Hsg.Society |) Org. R'dent-2. |
| Ltd., Dr. R. G. Thadani Marg, |) |
| Worli, Mumbai 400 018 | |

None for the Petitioners.

Mr. Rajan Alimchandani, Respondent No.2 -in- person.

Ms. V. S.Mhaispurkar, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 15th APRIL, 2015

ORAL JUDGEMNT :

1 Respondent No.2 is the complainant in criminal case no. 2904843/SS/2007 pending before the court of Metropolitan Magistrate, 29th Court, Dadar, Mumbai. The petitioners are facing trial in the said case for the offence punishable under section 500 of the Indian Penal Code.

2 Respondent No.2 has filed the said complaint against the petitioners alleging, inter-alia, that they had committed offence of defamation by issuing notice for the meeting of Managing Committee of the Venus Co-operative Housing Society Ltd., Worli, Mumbai. It contains the defamatory material against respondent no.2. The alleged defamatory material can be reproduced as under :

“To consider to initiate expulsion proceedings against Mr. Rajan Alimchandani who is out to work against the interest of the Society.”

3 The petitioners are absent. None for the Petitioners. No advocate is appearing on behalf of the petitioners. Learned additional public prosecutor Ms. Mhaispurkar is heard on behalf of respondent no.1 - State of Maharashtra. Heard Respondent No.2-Rajan Alimchandani in-person.

4 I have gone through the copy of the notice in question. It is signed by the petitioner no.2 Mr. P.C. Gupta. There is no material to show that the other petitioners shared the intention of the petitioner no.2 Gupta while issuing the said notice. Notice, prima facie, appears to have been signed by Mr.Gupta, the petitioner no.2.

5 The contents of the notice, particularly the portion reproduced here-in-above, show that a prima facie case under section 500 of the Indian Penal Code was made out against the accused no.2-Mr. Gupta. However, I am of the view that there was no material to indicate that the petitioners no. 1, 3 and 4 had shared the intention of the petitioner no.2 - Gupta. In view thereof, the order of the learned Magistrate, issuing process against the petitioner-accused no.2 and the order of the Sessions Court, rejecting the revision application of accused no.2-Gupta are correct. However, the orders of the learned Magistrate and the learned additional Sessions Judge in respect of the petitioner nos. 1,3 and 4 do not appear to be correct. The learned Magistrate had issued process against the

petitioner nos. 1, 3 and 4 despite there being no material to show their involvement in the alleged defamatory statement in the notice. The learned additional Sessions Judge has mechanically decided the revision application and had dismissed the same. Hence, I am inclined to allow the petition partly.

6 Writ Petition is partly allowed.

7 The proceedings pending against the petitioner nos. 1, 3 and 4 before the Metropolitan Magistrate, 29th Court in Criminal Case No. 2904843/SS/2007 are quashed. The petitioners nos. 1, 3 and 4 are discharged. Their bail bonds shall cancelled.

8 The case to proceed against the petitioner no.2/ applicant no.2 -Gupta for the offence punishable under section 500 IPC.

9 Writ Petition stands disposed of in the above terms.

(JUDGE)

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