

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 4400 OF 2014

Balchandran Unni & Ors. .. Petitioners

Versus

The State of Maharashtra & Anr. .. Respondents

Mr. Vishwajeet Sawant a/w Vishwabhushan Kamble i/b M/s. Jaykar & Partners, Advocate for the petitioners

Mr. V. B. Konde-Deshmukh, Advocate for the respondent-State

Mr. Pradeep Nayak, Advocate for the respondent No. 2 – present in person.

CORAM:-M.L. TAHALIYANI, J.
DATED : -23/02/2015

P.C.

Admit. Respondents waive service. By consent of the parties taken up forthwith for final hearing.

2 Heard the learned counsel for the petitioners, learned advocate for respondent No. 2 and learned APP for respondent No. 1-State.

3 This petition impugns the order dated 1st September, 2014 passed by the learned Magistrate, 32nd Court,

Andheri, Mumbai, directing issuance of process against the petitioners for the offence punishable u/s 500 r/w 34 of IPC.

4 The petitioners are members of Serenity Shree Sai Co-operative Housing Society, Ltd., situated at Oshiwara, Andheri (W) Mumbai. Respondent No. 2 Dr. Pradeep Ramraya Nayak is also one of the members. Respondent No. 2 had filed a complaint before the learned Magistrate making allegations against the petitioners that they had defamed him (respondent No. 2) by publication of notice of General Body Meeting and by publication of Minutes of the General Body Meeting held on 5th of March, 2011. After recording statement of respondent No. 2 on oath, the learned Magistrate himself held inquiry u/s 202 of Cr. P. C. After completion of inquiry, the process for the offence punishable u/s 500 r/w 34 of IPC was issued against the petitioners.

5 The petitioners had filed revision application before the Sessions Court along with an application for

condonation of delay of about 500 days. The application for condonation of delay has been rejected by the learned Sessions Court. The writ petition bearing No. 4897 of 2014 challenging the said order of the learned Sessions Judge has been presented before this Court. It was heard today at length and has been dismissed. In view of these developments, in fact I was not inclined to hear the present writ petition on merits. However, after having gone through the allegations which are part of the alleged notice and the minutes of the meeting, I felt that this petition can be heard on merits immediately. Therefore, though the Court was earlier not inclined to hear the writ petition on merits, opportunity was given to both the sides to address the Court.

6 After having gone through the notice of General Body Meeting and the Minutes of the Meeting, I do not find anything for the petitioners to argue before the Court. Respondent No. 2 is also unable to explain as to how the

contents of the notice and the minutes of the meeting amounted to defamation. In my view, it will be apt if the contents of notice are reproduced as a whole and it will be further apt to reproduce para No. 7 of the minutes of the meeting, which is alleged to be a defamatory material against respondent no. 2. Both the documents are reproduced as under:

“ *February 27, 2011*

*AGENDRA FOR SPECIAL GENERAL BODY
MEETING OF THE MEMBERS OF THE SOCIETY
TO BE HELD ON MARCH 05, 2011 AT 8.30 PM.*

*1) To discuss the resignations of majority of
Committee members in view of the outbursts by Dr.
Nayak; Mr. Deepak Deulkar; Mr. Rajkumar Chandan
of ADEF and Mr. Gharat; Mr. Animesh Sinha and Mr.
Debu Patnaik of B1/B2 on February 25, 2011 accusing
the Committee of*

- . High handed functioning*
- . Allegations of taking bribes from the new
security agency.*
- . Calling all 7 male members of the Managing*

Committee “Eunuchs”.

2) *To consider to fill up the vacant positions in the Managing Committee or initiating the process of appointment of Administrator in case no member is willing to join the Managing Committee.*

For Serenity Shree Sai Wings ADEF CHS Limited

Sd/-

Secretary”

Para 7 of the minutes of the meeting:

“7. The General body then asked Dr. Nayak who had abused the committee members on 25th Feb to speak up and clarify his behaviour. In spite of repeated insistence from several members, Dr. Nayak chose to remain silent.”

7 Bare reading of the notice and the contents of para 7, of the minutes of the meeting clearly show that there is nothing defamatory against respondent No. 2. Admittedly both the documents were published. Since there is nothing defamatory in both the documents, I am of the view that the

proceedings pending against the petitioners in the Court of learned Magistrate are abuse of process of court and, therefore, need to be quashed.

8 The proceedings pending in the Court of Magistrate against the petitioners vide Criminal Complaint No. 1047/SS/2012 are hereby quashed. Bail bonds, if any, stand cancelled.

9 The writ petition stands dismissed.

(JUDGE)

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