

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 724 OF 2005

1. Avinash S/o Gurupad Balkundi (Died)
(Deleted).
2. Sugandh S/o Prasad Shinde,
Age. 65 years, Occu. Treasurer,
R/o. 7, Moreshwar Apartment,
Shivaji Nagar, Dasak, Nashik.
3. Rev. Narendra S/o Rangnath Shinde,
Age. 60 years, Occu. Vice-President,
R/o. Mission Compound, Behind Post
Office, Manmad, Dist. Nashik.
4. David S/o Valoba Kshetre,
Age. 72 years, Occu. Trustee,
R/o. Kamalkunj Gulabsing Compound,
Station Road, Ahmednagar.
5. Prasad S/o Omrao Amolik,
Age. 68 years, Occu. Trustee,
R/o. St. John Baptist Church,
Near Gondhavani, Shrirampur,
Dist. Ahmednagar.
6. Bhaskar S/o Jakab Salve,
Age. 50 years, Occu. Trustee,
R/o. 3-Punjab colony, Canal Road,
Near Jail Road, Nashik.
7. Shashikant J. Wanjare,
Age. 70 years, Occu. Trustee,
R/o. Christian Colony, Tarakpur,
Ahmednagar.
8. Smt. Margarate Namdeo Mate,
Age. 61 years, Occu. Trustee,
R/o. S.P.G. Mission Compound,
Tarakpur, Ahmednagar.
9. Fransis David John,
Age. 58 years, Occu. Trustee,
R/o. Flat No. 2, Sheetal Dhara
Apartment, Bodhale Nagar,

Poona Road, Nasik.

10. Miss. Margarate Ramesh Gangurde.
Age. 49 years, Occu. Trustee,
R/o. N-32, H-1-5-6, Shantinagar,
CIDCO, Nashik.

11. Smt. Sharlet Samsung Nade,
Age. 47 years, Occu. Trustee,
R/o. Nade Niwas, Sharanpur,
Nashik.

....Applicants.

Versus

1. The State of Maharashtra.
2. Rt. Rev. Mr. Pradip Lamuel Kamble,
Age. 50 years, Occu. Bishop of Nasik,
R/o. Bishop House, Outram Road,
Tarakpur, Tq. & Dist. Ahmednagar.

....Respondents.

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Advocate for Applicant : Mr. P B Shirsath
APP for Respondent No.1: Mr. A.R. Kale
Advocate for Respondent No.2 : Mrs. S.D. Tambat-Dhumal

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CORAM : V. K. JADHAV, J.
DATED : 24th NOVEMBER, 2016

ORAL JUDGMENT:-

1. Learned counsel for the applicants submits that during pendency of this criminal application, applicant No.1 died. In view of this, since the matter abates against applicant No.1-original accused, leave to delete his name. Deletion be carried out forthwith.

2. The applicants/original accused seek quashing and setting aside the order dated 20.09.2004, passed by learned J.M.F.C. Ahmednagar in S.T.C. No. 2221 of 2004, issuing thereby process

against the applicants accused for the offence punishable under Section 500 of I.P.C.

3. Brief facts, giving rise to the present criminal application, are as follows:-

a) Nashik Diocesan Council is a registered trust, having its office at Nashik and the applicants are elected members of the said Trust, whereas respondent No.2 complainant was ex-officio member of the said Trust, amongst 15 trustees. Respondent No.2 complainant, who was Bishop of the trust and ex-officio member, without giving any intimation, remained absent in the meetings of the Board of Trustees, and thus, in terms of bylaw No.14 (c) of the Trust, respondent No.2-complainant became disqualified. Consequently, by resolution dated 14.4.2003, the applicants had unanimously taken a decision and thereby disqualified respondent No.2 complainant as ex-officio member, Bishop of the Trust. It has also resolved that since respondent No.2 complainant was disqualified as trustee, as per clause 14(c) of the Trust, change report to that effect is to be submitted before the Assistant Charity Commissioner, Nashik. Accordingly, applicant No.1, being Chairman of the Trust, has submitted change report in the office of Assistant

Charity Commissioner, Nashik. On 31.5.2003, though respondent No.2 complainant was intimated the said fact by speed post, he continued to act as Bishop of the Trust on the basis of general power of attorney executed in his favour. Thus, the applicants therefore, constrained to issue a public notice in daily newspapers to the effect that the respondent complainant was removed from the office of trustees in general body meeting. Respondent No.2 complainant has treated the said publication as defamation and filed complaint before the J.M.F.C. Ahmednagar, bearing S.T.C. No. 2221 of 2004. By order dated 20.9.2004, learned J.M.F.C. Ahmednagar, on perusal of complaint, verification and the documents filed alongwith the complaint, issued process against the applicants under Section 500 of I.P.C. Hence, this criminal application.

4. Learned counsel for the applicants submits that as per the bylaws, particularly bylaw No. 14, disqualification of the trustees is provided. In terms of clause (c) of bylaw No.14, the trustee become disqualified to continue as a trustee if he remained absent in the meetings of the Board of Trust successively held at four (04) occasions, unless leave of absence is sought and executed by resolution. Learned counsel submits that respondent No.2 complainant remained absent in the meetings dated 26.10.2001, 3.2.2002, 21.4.2002, 16.6.2002, 25.8.2002, 30.11.2002, 29.12.2002,

12.1.2003, 16.2.2003 and 14.4.2003, without obtaining any leave. Thus, the applicants, by resolution dated 14.4.2003, declared respondent No.2 original complainant as disqualified to be continued as ex officio trustee -Bishop and also resolved to submit change report to that effect before the Assistant Charity Commissioner. Furthermore, though intimated about the said fact, the respondent complainant continued to act as Bishop of the Trust on the basis of general power of attorney, executed in his favour and as such, applicants thought it fit to issue public notice for the awareness of public.

5. Learned counsel for the applicants further submits that the respondent complainant in para 3 and 4 of the complaint has contended that there was no general body meeting held or no such resolution passed against him nor he was invited for any general body meeting. If respondent original complainant wants to dispute the aforesaid resolution and the change report, in that case, the proper remedy is to approach the Assistant Charity Commissioner and to file objection, if any. Even accepting the allegations made in the complaint, as it is, no case is made out for issuance of process. Further, in view of 9th exception of section 499 of I.P.C. such imputation, if made in good faith, is not a defamation since the applicants, who are duly elected trustees, in order to protect the

interest of the trust, have made such publication. Learned counsel submits that the case squarely falls under exception 9 of Section 499 of I.P.C. The impugned order of issuance of process passed by learned Magistrate thus, is liable to be quashed and set aside.

6. Learned counsel for the applicants, in order to substantiate his submissions, placed reliance on the following two judgments:-

- i) *Parmeshwarlal R. Dalmia & Others vs. Ravindra Prasad Khetan & Others, reported in 1996(1) ALL MR 424.*
- ii) *Vinodchandra Purushottamdas Shah & Others vs. Shri. Puspansen Panachand Jhaveri & Others reported in 1996(2) ALL MR 533.*

7. Learned counsel for respondent No.2 original complainant submits that in order to defame respondent No.2 complainant, the applicants have published false news to the effect that respondent complainant was removed from ex-officio trusteeship in the general body meeting and since the said news has been published in daily newspapers "*Dainik Lokmaratha*" dated 17.7.2003 and "*Dainik Lokmat*" dated 15.7.2003, Ahmednagar edition, the image of respondent No.2 complainant came to be diminished in the eyes of Christian community at large and in Ahmednagar district, in particular. The respondent complainant is Bishop and is responsible person for

religious activities of Christian community. Thus, publication of libel against him had tarnished his image and had marred his reputation in the Christian community. There was no such general body meeting and no resolution was passed against him. There was no removal of respondent complainant from the office of ex-officio trustee. The learned Magistrate has therefore, rightly issued process against the applicants accused for the offence punishable under Section 500 of I.P.C. No interference is required. Learned counsel submits that at present, respondent No.2 complainant is Chairman of the said Trust.

8. I have also heard learned A.P.P. for respondent No.1 State.

9. On careful perusal of bylaws and more particularly bylaw No. 14(c), it is manifest that disqualification of the trustee may occur if the trustee remained absent in the meeting of the trust successively on four occasions unless leave of absence is sought and executed by resolution. In the instant case, the applicants, who are elected trustees of the said trust, passed resolution dated 14.4.2003 unanimously and accordingly disqualified the respondent original complainant in terms of bylaw No. 14(c). Respondent No.2 complainant seems to be aggrieved because the applicants issued a public notice in daily newspapers about the said removal of respondent No.2 complainant from the trusteeship and according to

respondent original complainant that has diminished his image in the eyes of Christian community at large and Christian community at Ahmednagar in particular.

10. It appears from the copy of resolution that the scheme was framed as per the directions given by this Court and confirmed by the Supreme Court. Whether respondent No.2 original complainant remained absent successively in the meetings of the trust, the said question is to be determined by the Assistant Charity Commissioner in pending change report. However, if respondent No.2 complainant, though intimated about his removal, continued to act as Bishop of Nashik on the basis of General power of attorney, executed in his favour by the Trust, and if the applicants made such publication in order to protect the interest of the trust, the case squarely falls under 9th exception of Section 499 of I.P.C.

11. It is not the case of the respondent original complainant that the applicants, being trustees, have passed resolution contrary to bylaw and acted deliberately to prejudice the interest of the respondent complainant. Learned Magistrate has not applied his mind while issuing the process under Section 500 of I.P.C. against all the applicants. Even accepting the allegations made in the complaint as it is, in terms of 9th exception of Section 499 of I.P.C., no case is

made out against the applicants accused. The impugned order does not stand and the same is liable to be quashed and set aside. Hence, I proceed to pass the following order:-

O R D E R

- I. Criminal application is hereby allowed.
- II. The order dated 20.9.2004, passed by learned Judicial Magistrate, First Class, Ahmednagar, in S.T.C. No. 2221 of 2004 issuing thereby process against the applicants for the offence punishable under Section 500 of I.P.C. is hereby quashed and set aside.
- III. Criminal complaint bearing S.T.C. No. 2221 of 2004, pending before learned J.M.F.C. Ahmednagar, is hereby dismissed against all applicants-accused.
- IV. Rule made absolute in the above terms. Criminal application is accordingly disposed of.

(V. K. JADHAV, J.)

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