

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 261 OF 2005

Mangal Anant Lolage,
Age 22 years, Occ. Household
R/o Gokul Nagar, Near Gathad Plot,
at post Pandharpur, Tq. Pandharpur
District Solapur.

..Petitioner

Versus

1. Prabhakar Vithal Loage,
Age 59 years, Occ. Retired,
R/o House No.44/4,
New Mukund Nagar,
Opp Priti Kirana Stores,
Ahmednagar.

2. Madhukar Ramchandra Bhurade,
Age major, Occ. Labour,
R/o Gokul Nagar, Near Gathad Plot,
at post Pandharpur, Tq. Pandharpur
District Solapur.

3. Sau. Seema Madhukar Bhurade
Age major, Occ. Household
R/o Gokul Nagar, Near Gathad Plot,
at post Pandharpur, Tq. Pandharpur
District Solapur.

4. The State of Maharashtra.

..Respondents

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Advocate for Petitioner : Shri Yogesh Kale h/f Shri R.R.Karpe
APP for Respondent 4 : Shri Karlekar S.G.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 28, 2016

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ORAL JUDGMENT :-

1. The petitioner has challenged the order of issuance of process

dated 11.1.2005 passed by the learned Magistrate, who has prima facie, concluded that there was material and circumstances for issuing process under Sections 500 and 501 of the Indian Penal Code (“IPC”).

2. This Court, by its order dated 27.6.2005, granted interim relief to the petitioner in terms of prayer clause (c).

3. Prayer clause (C) reads as under:-

“(C) Pending hearing and final disposal of this Criminal Writ Petition kindly grant stay to the further proceedings of S.T.C.No.480 of 2004 pending before the learned Judicial Magistrate, First Class, Ahmednagar, filed by the Respondent No.1.”

4. By order dated 27.9.2005, this petition was admitted and interim relief was continued.

5. I have adjourned this matter on 7.6.2016, 23.6.2016 and 24.6.2016 to enable respondents 2 and 3 to participate in the hearing of this petition. However, even today, none appears for all the respondents.

6. I have heard the submissions of the learned Advocate for the

petitioner. I have gone through the petition paper book and I have considered the material on record.

7. The petitioner had filed a Criminal Misc. Application No.72 of 2004 under Section 125 of the Criminal Procedure Code ("CrPC") claiming maintenance against her husband. In the said application, the petitioner had made a contention in paragraph No.4 that the father of her husband - Ananta Prabhakar, respondent No.1 herein is a Matka agent.

8. In the Written Statement filed by Ananta Prabhakar dated 19.8.2004, he denied in paragraph No.4 that his father was a Matka Agent. There is no dispute that the said application was allowed and the petitioner was held entitled for maintenance allowance.

9. Respondent No.1 herein filed Criminal Case No.480 of 2004 before the learned Chief Judicial Magistrate contending that the petitioner along with two others has committed an offence under Sections 500, 501 and 37 of the IPC. The ground for lodging the said proceedings was that the petitioner, by making a statement in paragraph No.4 of her application for maintenance, had discredited respondent No.1 and had therefore, defamed him. It is on the said complaint, which was supported with verification dated 31.12.2004 that the impugned order of issuance of process against the petitioner

alone has been passed.

10. Learned Advocate for the petitioner strenuously submits that the Complaint put-forth by respondent No.1 does not make out a case for issuance of process under Sections 500 and 501 of the IPC. The impugned order is cryptic in nature and does not reflect application of mind by the learned Magistrate. Reliance is placed on the judgment of this Court in the matter of Mahendra Shankarrao Godbole Vs. Prabhakar Hariram Gulhane and another [2005 (1) Bom.C.R.(Cri.) 421].

11. It is trite law that an order of issuance of process has to be a well reasoned order. The said order ought to be supported with conclusions and it should reflect proper application of mind to the material on record. In the instant case, the impugned order is as under:-

“Perused the complaint and read the verification. Heard the learned counsel for the complainant. On careful perusal of the complaint and verification there is sufficient ground to issue processes against accused no.1. The complaint and verification prima facie do not reflects any circumstances to issue process against accused no.2 and 3. Hence issue process against accused no.1 u/sec.500 and 501 of I.P.C. The complaint against accused no.2 and 3 stands dismissed.”

12. I, therefore, do not find that the impugned order could be said to be a reasoned order indicating that the learned Magistrate has considered the material on record and has prima facie reached a conclusion that an offence is made out.

13. Notwithstanding the above, it clearly appears that the statement made by the petitioner in paragraph No.4 of her application for maintenance mentions that the father of her husband is a Matka Agent. Issue, therefore, is as to whether the said contention in a document which is placed on record before the Court and is a part of court proceedings, could be said to be an offence under Section 501 of the IPC.

14. Sections 500 and 501 of the IPC reads as under:-

“Section 500 - Punishment for defamation. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Section 501 - Printing or engraving matter known to be defamatory. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

15. Considering the statement made in the application for maintenance, I do not find that it could be said to be printing or engraving of matter with the belief that such matter is defamatory in nature and would lower the esteem of the father of the husband in the eyes of the public. Defamation has been defined under Section 499 of the IPC to mean, *“words either spoken or intended to be read or signs or visible representation or publishing any material against any person intending to harm his character or knowing or believing that it would harm the respect and reputation of such a person.”*

16. I do not find that the statement made in an application before a Court could be said to be an act of publishing such material which would easily be noticed by the public at large and the public would have an access to read the said material by which, the reputation or the respect of a person would be lowered in their esteem.

17. This Court in the matter of Mahendra (supra) has concluded in paragraph Nos.10 and 11 as under:-

“10. I have considered the submissions made by the parties. Since it is the case of respondent No. 1 that he has been defamed by the applicant, it is necessary to find out from the averments in the complaint, whether prima facie, offence of defamation against respondent No. 1 is made out. I have gone

through the complaint minutely and particularly, paragraphs 6, 7, 8 and 9 of the complaint and also Criminal Case No. 368/98. A bare reading of two complaints, in my opinion, do not make out even prima facie case for the offence of defamation in terms of Section 499 punishable under Section 500 or an offence punishable under Section 501 read with 34 of the Indian Penal Code. Mr. Gulhane was called upon to cite judgment, in which, prosecution of the accused with the aid of Section 34 in respect of offence of defamation has been considered. However, Mr. Gulhane could not cite any judgment, in which process has been issued against accused with the aid of Section 34 in respect of offence under Section 500 or 501 of Indian Penal Code. That apart, even after reading of the complaint filed by respondent No. 1 as a whole, in my opinion, no case absolutely has been made out against the present applicant for issuance of process under Sections 500 and 501 read with 34 of Indian Penal Code. To that extent, the learned Chief Judicial Magistrate does not appear to have applied his mind while issuing process against applicant. Similarly, the learned 5th Additional Sessions Judge, in his judgment and order dated 13-9-2000 after considering the principles to be followed by Magistrate while issuing process issued by the Chief Judicial Magistrate has completely lost sight of the fact that at least against present applicant, there is no material available either in the complaint, or in the verification to attract even prima facie commission of offence under Sections 500 and 501 read with 34 of Indian Penal Code.

11. I have considered the ratio of various judgments cited by respondent No. 1. Applying the ratio of the judgment cited by respondent No. 1, I am of the opinion that no offence

alleged against the applicant is made out and therefore, issuance of process by the learned Chief Judicial Magistrate in respect of offence alleged, which is confirmed by the Revisional Court, in my opinion is patently illegal and deserves to be quashed and set aside. It is well settled that the jurisdiction under Section 482 of Criminal Procedure Code has to be exercised to secure the ends of justice and/or to prevent the abuse of process of any Court but in exceptional cases. In my opinion, this is a fit case in which this Court should exercise jurisdiction under Section 482 of Criminal Procedure Code. Since in my opinion, issuance of process against the applicant for the offences alleged is nothing but abuse of process of the Court. In my opinion, even prima facie, no offence is made out against the applicant. Therefore, impugned orders are liable to be quashed and set aside.”

18. In the light of the above, this petition succeeds. Same is allowed in terms of prayer clause (B), which reads as under:-

“(B) To quash and set aside the order dated 11.1.2005 passed by the learned Judicial Magistrate, First Class, Ahmednagar, wherein the process has been issued against the present petitioner in S.T.C. No.480 / 2004 filed by the Respondent No.1 under Section 500, 501 and 34 of the Indian Penal Code and the petitioner be discharged from the said offence / complaint.”

19. Rule is made absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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