

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 438 OF 2006

1 Manoharrao s/o Gangakishan Arlikar,
Aged : 55 years, Occupation : Advocate,
R/o Advait, H.No.2502, Gandhinagar,
Biloli, District Nanded.

2 Manoj s/o Manoharrao Arlikar,
Age : 28 years, Occupation : Advocate,
R/o Advait, H.No.2502, Gandhinagar,
Biloli, District Nanded.

...PETITIONERS

-VERSUS-

1 The State of Maharashtra.

2 Chandraprakash s/o Bhagwanrao Kulkarni,
Aged : 50 years, Occupation : Agri,
R/o Biloli, District Nanded.

...RESPONDENTS

...
Advocate for Petitioners : Shri A G Godhamgaonkar.
APP for Respondent 1 : Shri S.G.Karlekar.
Respondent No.2 absent.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th June, 2016

Oral Judgment :

1 The Petitioners are aggrieved by the order dated 20.06.2006 delivered by the learned Judicial Magistrate First Class, Biloli in SCC No.588/2005 by which process was issued against the Petitioners under

Section 500 of the Indian Penal Code.

2 While issuing notice on 19.07.2006, this Court had granted interim relief in terms of prayer clause (C) to the Petitioners, which reads as under:-

“(C) During the pendency and final disposal of this petition, the order dated 20.06.2006 of the learned Judicial Magistrate First Class, Biloli in SCC No.588 of 2005 on his file, to the extent of the Petitioners, be stayed.”

3 This Court after hearing the Petitioners and the Respondents had passed an order on 28.11.2006 and interim relief in terms of prayer clause (C) was confirmed. The observations of this Court in it's order dated 28.11.2006 read as under :-

- “1. By way of present petition, the petitioners challenge the order passed by the Judicial Magistrate (First Class), Biloli, in S.C.C. No. 588 of 2005, dated 20th June 2006, thereby issuing process. The allegations against the present applicants, who are Lawyers of original accused nos. 3 to 6, are that they have used some defamatory words against the present respondent no.2 in the written statement.*
- 2. Heard the learned Counsel for the Petitioners, the learned Additional Public Prosecutor appearing for respondent no.1, and the respondent no.2 appearing as party in person.*
- 3. At least prima facie, I do not find that proceedings under Section 500 of the Indian Penal Code could be initiated against Counsel who have drafted pleadings as per the instructions of their client and which is duly verified by the client.*

4. *In that view of the matter, issue Rule, returnable early.*
5. *Interim relief in terms of prayer clause "C".*

4 I have considered the submissions of Shri Godhamgaonkar, learned Advocate for the Petitioners and the learned APP

5 This matter was shown on the final hearing board on 10.06.2016. Since Respondent No.2, party-in-person, was not present before this Court, the matter was adjourned by passing the following order:-

- “1. *Mr.Godhamgaonkar, learned Advocate for the Petitioners submits that interim relief was granted to the petitioners in terms of prayer clause “C” on 19.07.2006. The petitioners are practicing Advocates. This Court had arrived at a prima facie conclusion that the proceedings do not attract Section 500 of the IPC against the petitioners who have drafted the written statement as per instructions of their clients and which have been duly verified by the clients.*
2. *Respondent No.2/ party in person is not present. Matter is shown on the final hearing board at Sr.No.209.*
3. *In the light of the above, in order to afford an opportunity of hearing to Respondent No.2, stand over to 17.06.2016. It is made clear that if respondent No.2 is not present on the next date of hearing, this matter would be decided after hearing the petitioners and the learned APP.”*

6 This matter is shown on the board at Sr.No.916 today.

Respondent No.2 is not present before the Court. In the above backdrop, I have considered the submissions of the learned Advocates for the Petitioners and the State.

7 The short issue raised before this Court is as to whether, the Petitioners can be said to have committed an offence under Section 500 of the Indian Penal Code as is alleged by the party in person (Respondent No.2).

8 Section 499 which defines defamation reads as under:-

499. Defamation :-

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1:- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2:- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3:- An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4:- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loath some state, or in a state generally considered as disgraceful. ”

9 Section 500 provides for punishment if a person is held guilty of having committed an offence of defamation under Section 499. The punishment would be simple imprisonment for a term which may extend to two years or with fine or both.

10 In my view, the act of defamation would be proved if the accused by words either spoken or intended to be read or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, could be punished for the said act.

11 The document at issue, which is said to be an act of defamation committed by the Petitioners, is the Written Statement filed by four persons, namely, Shankar Gangadhar Mukhedi (Shettiwar),

Gangamani Shankar Mukhedi (Shettiwar), Laxman Shankar Mukhedi (Shettiwar) and Suresh Shankar Mukhedi (Shettiwar) in Regular Civil Suit No.38/2005. It is not in dispute that the Written Statement as well as its verification was signed by these four Defendants. In the verification it has been specifically stated that paragraphs 1 to 20 are true and correct as per their own knowledge and information of the Defendants which they admit to be true and correct.

12 The Written Statement was filed in the civil proceedings before the Court. The contents of the Written Statement are germane to the case and its contents are restricted to the parties to the case and the Court. I do not find that the contents of the Written Statement could be said to be an act of defamation under Section 499 of the Indian Penal Code.

13 Similarly as has been prima facie held by this Court in this matter in paragraph 3 of the order dated 28.11.2006 that the proceedings under Section 500 could not be initiated against the counsel who has drafted the pleadings as per the instructions of the client and duly verified by the client.

14 Besides the above, I have gone through the contents of the

Written Statement and I find that the contentions at four places appear to have antagonized Respondent No.2, which are as follows:-

In paragraph 9 of the Written Statement: *“The illegal purchaser Chandra Prakash who is court bird and Pairwaikar and Nagamani wife of defendant No.1 are the persons joining hands with Plaintiff have caused to file false suit against the defendants”.*

In paragraph 9 of the Written Statement : *“Chandraprakash is a person who wonders (read wanders) in court premises daily in court hours.”*

In paragraph 12 of the Written Statement : *“the alleged purchaser Chandra Prakash is a gunning persons (read cunning person).”*

In paragraph 14 of the Written Statement : *“On the contrary, the Plaintiff has gone tender (read under the) thumb of Nagmani and Chandraprakash and is dancing on their tune”.*

15 In my view, even if these statements in the Written Statement are considered, they do not fulfill the requirement of Section 499 of the Indian Penal Code.

16 In the light of the above, this Criminal Writ Petition is allowed in terms of prayer clause (B), which reads thus:-

“(B) The order dated 20.06.2006 of the learned Judicial Magistrate First Class, Biloli in SCC No.588/2005 on his file, ordering to issue process for offence under Section 500 of the Indian Penal Code be quashed and set aside to the extent of the petitioners.”

17 Rule is made absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)