

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1075 OF 2015

Balasaheb Jagannath Bothe Patil,
Age : 42 years, Occu.: Service,
R/o. 'Jidda' Bungalow,
Dena Bank Colony, Savedi,
Ahmednagar, District Ahmednagar .. Petitioner

Vs.

- 1] The State of Maharashtra
- 2] Devram Kisan Ghungarde,
Age : 49 years, Occu.: Agriculture,
R/o. Chas, Taluka and District
Ahmednagar .. Respondents

Mr. S.S. Jadhavar, Advocate for the petitioner
Mr. P.G. Borade, APP for the respondent/State
Mr. P.N. Khedkar, Advocate for respondent no.2

CORAM : V.K. JADHAV, J.
DATE : 27/09/2016

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel for the parties.

2. Being aggrieved by the order passed by the learned 7th Judicial Magistrate First Class, Ahmednagar dated 20/8/2013, in S.T.C. No. 2585 of 2012, thereby issuing process against the present petitioner for the

offence punishable under section 500 of the Indian Penal Code and the judgment and order dated 15/7/2015 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Revision No.188 of 2013, thereby confirming the order passed by the learned Magistrate, the original accused no.15 has preferred this Criminal Writ Petition.

3. Brief facts giving rise to the present Criminal Writ Petition, are as under:-

. On 13/8/2012, the villagers of village Chas submitted a requisition for calling upon Gramsabha meeting for passing resolution against the present respondent no.2 - original complainant in respect of his certain activities. Accordingly, the Gramsabha meeting was called and on 15/8/2012 and the resolution came to be passed in the Gramsabha, Chas, to the effect that the public offices in the area are to be requested not to entertain the complaint filed by respondent no.2 in their respective offices without verification.

. Accordingly, on 17/8/2012, communication was sent to the District Collector about the resolution passed in the Gramsabha meeting of village Chas.

. On 24/8/2012, a news item in respect of the said resolution passed in the Gramsabha of village Chas was published in the Daily Sakal, of which the present petitioner is the Residential Editor. Respondent no.2 has filed a private complaint before the learned 7th Judicial Magistrate First Class, Ahmednagar vide S.T.C. No. 2585 of 2012, seeking action against the office bearers of the village panchayat as well as the present petitioner and also one another Editor of Daily newspaper Pudhari.

. By order dated 20/8/2013, the learned Magistrate has issued the process against all the accused including the present petitioner for the offence punishable under section 500 of the Indian Penal Code.

. Being aggrieved by the same, the petitioner approached the learned Sessions Court, Ahmednagar by filing Criminal Revision No.188 of 2013. The learned Additional Sessions Judge, Ahmednagar, as aforesaid, by order dated 15/7/2015 has dismissed the Revision Petition and thereby confirmed the order passed by the learned Magistrate. Hence, this Criminal Writ Petition.

4. Learned counsel for the petitioner submits that on 13/8/2012, the villagers of village Chas submitted the requisition to village Gram Panchayat for passing a resolution against the respondent no.2 - original complainant for keeping law and order and peace in the village. The said requisition was signed by nearabout 70 villagers. Accordingly, on 15/8/2012, the said subject, as per requisition submitted by the villagers, was discussed in the Gramsabha meeting and a resolution came to be passed to the effect that if any complaint is submitted or would be submitted by the respondent no.2-original complainant to any of the public offices of that area, then no direct action shall be taken on the basis of such complaint/application without verifying the allegations made therein. Learned counsel for the petitioner submits that on perusal of the news item dated 24/8/2012, it is manifest that the said resolution passed in the Gramsabha of village Chas and the decision taken in the Gramsabha meeting has been accurately reproduced in the news item. Learned counsel for the petitioner submits that it is only alleged in the complaint filed by respondent no.2 that without making any enquiry, the present petitioner, who is the Residential Editor, has published the said news item in

the Daily newspaper i.e. Dainik Sakal dated 24/8/2012. It is reflected from the bare reading of the said news item that after going through minutely the requisition as well as the resolution, the said news item has been published in good faith. Learned counsel for the petitioner submits that there are no positive averments in the complaint that the present petitioner is directly responsible for publication of the said imputation. There are no allegations in the complaint that the petitioner being the Residential Editor had shared the requisite intention in publishing the said so-called objectionable matter. Further, there are no allegations in the complaint that the petitioner had any participation in selection of the said news item. Learned counsel for the petitioner submits that in view of above, the order of issuance of process passed by the learned Magistrate is not legal, proper and correct and the learned Additional Sessions Judge has dismissed the Revision by confirming the said order erroneously, without applying his mind.

5. Learned counsel for the petitioner, in order to substantiate his submissions, relies on the following cases :

1) **Jawaharlal Darda and ors. Vs. Manoharrao Ganpatrao Kapsikar and anr.** reported in **AIR 1998 S.C. 2117**

2) **Vijay Jawaharlalji Darda and others Vs. Laxmikanth C. Gupta and anr.** reported in **2005 CRI.L.J. 1886**

3) **Vivek Goenka Vs. State of Maharashtra and anr.** reported in **2003 CRI. L.J. 4058**

4) **Tankasala Ashok and anr. Vs. State of A.P. and anr.** reported in **2010 CRI. L.J. 2074**

5) **Ravi Prakash Vs. J.C. Diwakar Reddy and anr.** reported in **2010 CRI. L.J. 2558** and

6) **H.K. Dua Vs. Chander Mohan** reported in **2008 CRI. L.J. 2301**

6. Learned counsel for the respondent no.2-original complainant submits that from perusal of the news item, it appears that something more is mentioned in the news item beyond the contents of the resolution as passed in the Gramsabha meeting of the village Chas.

Learned counsel for the respondent no.2 submits that the petitioner is the Residential Editor of that area and in view of the provisions of the Press and Registration of Books Act, 1867 (for short "**the Act of 1867**"), he is responsible for the publication of the news items in the daily newspaper. Learned counsel for respondent no.2 further submits that whether the imputation, as published in the newspaper vide the said news item, is published in good faith or not, this is a matter to be considered during the course of the trial and at the initial stage of issuance of process, only whether *prima facie* case is made out or not, is required to be considered. Learned counsel for respondent no.2 submits that the learned Magistrate has therefore rightly passed the order of issuance of process and the learned Additional Sessions Judge has rightly confirmed the same.

7. Learned counsel for respondent no.2 - original complainant, in order to substantiate his submission, places reliance in the case of **M.N. Damani Vs. S.K. Sinha and others** reported in (2001) 5 SCC 156.

8. On careful perusal of the requisition dated 13/8/2012, it appears that nearabout 70 villagers have signed the said requisition, wherein it is stated that there is dispute going on between respondent no.2 herein and one Pandurang Devasthan Trust and the respondent no.2 is not ready to surrender his possession over the land owned by the said Pandurang Trust. It has further stated in the said requisition that the office bearers of the said Pandurang Devasthan Trust and the other leaders, social workers and villagers are fighting litigation against respondent no.2 herein on behalf of the Pandurang Devasthan Trust. It is further stated in the said requisition that, because of that, the respondent no.2 herein, in order to harass the said persons, who are litigating on behalf of the Pandurang Devasthan Trust, is submitting false complaints and cases in the various public offices of the region. It is further alleged in the said requisition that because of the said activities being carried out by respondent no.2, there is problem of law and order and peace in the village. It is also stated in the said requisition that a resolution may be passed in the Gramsabha of village Chas and the request be sent to

those public offices, not to take any direct action on the basis of such complaint submitted by the present respondent no.2 without verifying the allegations made in such a complaint. Accordingly, in Gramsabha meeting dated 15/8/2012, in the light of the said requisition, a resolution came to be passed to that effect.

9. On careful perusal of the news item published in the Daily newspaper dated 24/8/2012, it appears that the said newspaper published accurate and true report of the said Gramsabha meeting and the requisition submitted by the villagers in the said Gramsabha. It reflects even from the bare reading of the news item that the said news has been published after going through the requisition as well as the resolution passed in the Gramsabha meeting. I do not think that the petitioner, who is the Residential Editor of that area of Daily newspaper Sakal has got any personal interest in the matter and the same is also evident from the contents of the complaint. There are no allegations that with some ulterior motive, the petitioner has published the said news item in the Daily newspaper Sakal. Thus, the only inference could be drawn that accurate and true report of the said proceedings is published in the Daily

newspaper Sakal by the present petitioner in good faith. On the basis of the allegations made in the complaint, and in view of the above discussion, it cannot be stated that the petitioner intended to harm the reputation of the respondent no.2 - original complainant. In the given set of facts and circumstances of the case, *prima facie*, the offence of defamation is not made out as against the present petitioner.

10. It is submitted that there are no allegations in the complaint that the petitioner being Residential Editor, was having knowledge of the publication of the said imputation or that he was directly responsible for the publication. I do not find any substance in these submissions. Undisputably, the petitioner is the Residential Editor of the Daily newspaper Sakal and in view of the interpretation clause, as provided under section 1 of the Act of 1867, Editor means the person, who controls the selection of the matter that is published in a newspaper. Further, as per the provisions of section 7 of the Act of 1867, the petitioner is the person, who controls the selection of the matter that was published in the newspaper. The Residential Editor is no doubt controlling the news

items of that area being published in the daily newspaper and he is responsible for that. So in view of the above discussion, the cases relied upon by the learned counsel for the petitioner at serial nos.(2), (3), (4) and (5), cannot be made applicable to the facts and circumstances of the present case.

11. In the case of **Jawaharlal Darda and ors. Vs. Manoharrao Ganpatrao Kapsikar and anr.** (referred supra), in paragraph nos.4 and 5, the Apex Court has made the following observations :-

"4) As we have stated earlier, the news item was published on 4-2-84. The complaint in that behalf was filed by the complainant on 2-2-87. The news item merely disclosed what happened during the debate which took place in the Assembly on 13-12-83. It stated that when a question regarding misappropriation of Government funds meant for Majalgaon and Jaikwadi was put to the Minister concerned, he had replied that a preliminary enquiry was made by the Government and it disclosed that some misappropriation had taken place. When questioned further about the names of persons involved, he had stated the names of five persons, including that of the complainant. The said proceedings came to be published by

the accused in its Daily on 4-2-84. Because the name of the complainant was mentioned as one of the persons involved and likely to be suspended he filed a complaint before the learned CJM alleging that as a result of publication of the said report he had been defamed.

5) It is quite apparent that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary enquiry made by the Government. If the accused bona fide believing the version of the Minister to be true published the report in good faith it cannot be said that they intended to harm the reputation of the complainant. It was a report in respect public conduct of public servants who were entrusted with public funds intended to be used for public good. Thus, the facts and circumstances of the case disclose that the news item was published for public good. All these aspects have been overlooked by the High Court."

Thus, the view taken by the Apex Court in the above cited case, squarely applies to the facts and circumstances of the present case.

12. In the facts of the case of **M.N. Damani** referred and relied upon by the learned counsel for respondent no.2, a private complaint came to be filed, alleging therein that the accused in that case made imputations against the complainant in the application made under section 436 of the Code of Criminal Procedure before the learned Additional Chief Metropolitan Magistrate, Bangalore and in the backdrop of the facts of the said case, the Apex Court held that even assuming that the imputation made could be covered by exception 9 of section 499 of the Indian Penal Code, several questions still remain to be examined. The Apex Court in the facts of the said case, has further observed that whether such imputations were made in good faith, in what circumstances, with what intention, all those can be examined on the basis of the evidence in the trial. The facts and circumstances of the present case are altogether different and the aforesaid case relied upon by learned counsel for respondent no.2, cannot be made applicable to the instant case.

13. In view of the above discussion, I find that the petitioner herein, who is the Residential Editor has

published the correct and true report of the proceedings of the Gramsabha meeting in good faith. *Prima facie*, no offence of defamation is made out for issuance of process against him. The learned Magistrate has not considered the same and the learned Additional Sessions Judge has confirmed the order passed by the learned Magistrate without considering the aforesaid aspect of the case.

14. In view of the above discussion, I proceed to pass the following order :-

O R D E R

I) Criminal Writ Petition is hereby allowed.

II) The order dated 20/8/2013 passed by the learned 7th Judicial Magistrate First Class, Ahmednagar below Exhibit 1 in S.T.C. No. 2585 of 2012 and the judgment and order dated 15/7/2015 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Revision No.188 of 2013 are hereby quashed and set aside as against the present petitioner.

III) The complaint bearing S.T.C. No.2585 of 2012 is hereby dismissed as against the present petitioner.

15. Rule is accordingly made absolute in the above terms and Writ Petition is accordingly disposed of.

[V.K. JADHAV]
JUDGE

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