

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 CRIMINAL APPELLATE SIDE JURISDICTION
 CRIMINAL WRIT PETITION NO. 1205 OF 2002
 WITH
 CRIMINAL WRIT PETITION NO. 1206 OF 2002
 WITH
 CRIMINAL WRIT PETITION NO. 1207 OF 2002

Weekly Chitrlekha and Ors	Petitioners
V/s.	
The State of Maharashtra and another	Respondents

Mr. Vilas Tapkir a/w Mr. Uday Warunjikar a/w Mr. I. S. Yadav Advocate for
 Petitioners.
 Mr. Ashish Sawant h/f Mr. M. S. Mohite for Respoondent no. 2
 Mr. V. B. Konde-Deshmukh APP for the State.

CORAM : RAVINDRA V. GHUGE, J.
DATED : JULY 15, 2016.

PC :

- 1) I have heard the learned Advocates for the respective sides.
- 2) An identical issue arising out of identical set of facts and identical defamatory publication against the leaders and the followers of 'Swadhyay' was dealt with by this Court in the matter of **Maulik Kotak and Ors V/s State of Maharashtra and Ors [2013 (4) Bom. C. R. (Cri.) 585]**.
- 3) The learned Advocates for the Petitioners rely on the said Judgment and

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submit that since the same facts as like in this case involving an identical publication with reference to 'Swadhyay' has already been decided by this Court, these petitions deserves to be allowed in terms of prayer clause 'b'.

4) The learned Advocates for the Petitioners have placed reliance upon a recent view taken by the Hon'ble Supreme Court in the matter of **Foundation for Media Professionals through its Director, Manoj Mitta V/s Union of India [(2015) 9 SCC 252]** in support of their contention that unless an aggrieved person moves the Court in matters of defamation which can be said to punishable under Sections 500 r/w Sections 499 & 501 of the Indian Penal Code, such proceedings cannot be moved by any other person unless the said person is the subject matter of defamation.

5) Paragraph 3 of the Judgment in the case of **Foundation for Media Professionals through its Director, Manoj Mitta V/s Union of India [Cited Supra]** reads as under:

“3. In course of his submissions, he has drawn our attention to the decision of this Court in S. Khushboo v. Kannimmal and Anr especially paragraphs 37, 40 and 41 which read as under: (SCC pp.617-18)

37. It may be reiterated here that in respect of the offence of defamation, Section 199 Code of Criminal Procedure

mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. There is of course some room for complaints to be brought by persons other than those who are aggrieved, for instance when the aggrieved person has passed away or is otherwise unable to initiate legal proceedings. However, in given facts of the present case, we are unable to see how the complainants can be properly described as persons aggrieved' within the meaning of Section 199(1)(b) Code of Criminal Procedure. As explained earlier, there was no specific legal injury caused to any of the complainants since the Appellant's remarks were not directed at any individual or a readily identifiable group of people.

40. A complaint Under Sections 499, 500 and 501 Indian Penal Code was filed in response to this report. Like the present case, the Court had to consider whether the complainant had the proper legal standing to bring such a complaint. The Court did examine Section of the Code of Criminal Procedure, 1898 (analogous to Section 19 of the Code of Criminal Procedure, 1973) and observed that the said provision laid down an exception to the general rule that a criminal complaint can be filed by anyone irrespective of whether he is an "aggrieved person" or not. But there is a departure from this norm in so far as the provision permits only an "aggrieved person" to move the Court in case of defamation. This section is mandatory and it is a settled legal proposition that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an "aggrieved person", the trial and conviction of an accused in such a case by the Magistrate would be void

and illegal.

41. This Court further noted that the news-item in question did not mention any individual person nor did it contain any defamatory imputation against any individual. Accordingly, it was held that the complainant was not a 'person aggrieved' within the meaning of Section Code of Criminal Procedure 1898. The Court also took note of Explanation 2 to Section 499 Indian Penal Code which contemplates defamation of 'a company or an association or any collection of persons as such'. Undoubtedly, the explanation is wide but in order to demonstrate the offence of defamation, such a collection of persons must be an identifiable body so that it is possible to say with precision that a group of particular persons, as distinguished from the rest of the community stood defamed. In case the identity of the collection of persons is not established so as to be relatable to the defamatory words or imputations, the complaint is not maintainable. In case a class is mentioned, if such a class is indefinite, the complaint cannot be entertained. Furthermore, if it is not possible to ascertain the composition of such a class, the criminal prosecution cannot proceed”.

6) The learned APP submits that the Judgment of this Court in **Maulik Kotak and Ors V/s State of Maharashtra and Ors [Cited Supra]** and the Judgment of the Hon'ble Apex Court in the case of **Foundation for Media Professionals through its Director, Manoj Mitta V/s Union of India [Cited Supra]** has settled the issue.

7) In the light of the above, these petitions are allowed in terms of prayer clause (b) in Writ Petition No. 1206 of 2002 which reads as under:

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“This Hon'ble Court be pleased to call for the records and proceedings of the Criminal Case No. 2464 of 2002, which led to issuance of the process, and after going through its propriety, legality and constitutionality, be pleased to quash and set aside the order dated 06-07-2002 passed by the Ld. Judicial Magistrate First Class, Pimpri, Pune, in Criminal Case No. 2464 of 2002, and set aside the complaint filed by the Respondent no. 2.”

Prayer clause (b) in Writ Petition No. 1205 of 2002:

“(b) This Hon'ble Court be pleased to call for the records and proceedings of the Criminal Case No. 4057 of 2002, which led to issuance of the process, and after going through its propriety, legality and constitutionality, be pleased to quash and set aside the order dated 08/07/2002 passed by the Ld. Judicial Magistrate, First Class, AC Court, Pune, in Criminal Case No. 4057 of 2002, and set aside the complaint filed by the Respondent no. 2”.

Prayer clause (b) in Writ Petition No. 1207 of 2002:

“(b) This Hon'ble Court be pleased to call for the records and proceedings of the Criminal Case No. 4058 of 2002, which led to issuance of process, and after going through its propriety, legality and constitutionality, be pleased to quash and set aside the order dated 08-07-2002 passed by the Ld. Judicial Magistrate, First Class, AC Court, Pune, in Criminal Case No. 4058 of 2002, and set aside the complaint filed by the Respondent no. 2”.

8) Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)