IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICAITION NO.2848 OF 2004

Bank of India & Anr. ...Applicants
v/s.
Domnic A. Lobo & Anr. ..Respondents

Mr. Rushabh Sheth i/b M.S. Bodhanwalla & Co for the applicants.
Mr. S. H. Yadav, APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : JANUARY 19, 2016.

P.C.

. This is an application u/s.482 of Cr.P.C. for quashing and setting aside the order dated 4/7/2001 whereby the learned Metropolitan Magistrate has issued process u/s.500 of IPC pursuant to the Criminal Complaint No.5318/2001 filed by Respondent No.1.

2. The brief facts necessary to decide this application are as under:

The applicant No.1 is a Banking Company and the applicant No.2 is the General Manager of applicant No.1. The Respondent No.1/complainant had availed loan of Rs.4,00,000/- from the applicant No.1/Bank. The respondent No.1-complainant failed to pay the same within the stipulated period which necessitated the applicant No.1/Bank to institute recovery proceedings against the respondent No.1. The respondent No.1/ complainant entered into negotiations with the applicant No.2 for settlement of the amount. The applicant No.2 vide his letter dated 9/5/2001 gave a proposal and called upon the complainant/ Respondent No.1 to pay the dues of Rs.7,50,000/- towards full and final payment on or before 31/7/2001 in two installments as specified in the said letter. The complainant had stated that the said proposal was not agreeable to him.

3. The applicant No.1/Bank issued a public notice dated 1/6/2001 notifying that the execution proceedings bearing Spl. Darkhast No.137/1998 in the Court of Civil Judge S.D. Pune for recovery of dues of Rs.8.31,852.47. It was further stated that the Bank had prayed for attachment and sale of immovable property of respondent No.1 together with structure standing thereon, over which the Bank had mortgage charge. It was notified that the Bank was soon proceeding in the Hon'ble Court for attachment and sale of other immovable properties of respondent No.1 including his residential premises. It was also stated that the Bank had learnt that the respondent No.1 was trying to dispose of all his immovable properties with intention to leave Pune and the public in general was warned that any transaction with the respondent No.1, would be entirely at their own risk.

4. Aggrieved by publication of the said notice, the complainant filed a complaint against the aforesaid applicants alleging offence of defamation punishable under section 500 of IPC. The complainant has alleged that he was shocked to see such a notice despite compromise proposal being accepted by him. He has further stated that he had received several telephone calls inquiring whether he was proposing to sell the properties and whether he was planning to leave Pune. The complainant has stated that he enjoys good reputation and that the said notice damaged his reputation in the eyes of public. The complainant has further alleged that the applicant No.1/ Bank had deliberately issued the said notice with a sole intention of defaming him in the eyes of public. The complainant therefore filed a complaint before learned JMFC, Pimpri, District Pune for offence punishable under section 500 r/w. 34 of IPC.

5. By order dated 4/7/2001 the learned Magistrate took cognizance of the complaint and issued process for the offence under section 500 r/w 34 of the IPC. Aggrieved by this order, the applicants has invoked the inherent powers of this court u/s.482 of Cr.P.C.

6. Mr. Rushabh Sheth, the learned counsel for the applicants has submitted that the complainant had admittedly taken loan from

the applicant No.1/bank and that the settlement proposal given by the Bank was not acceptable to the complainant. He has submitted that the averment in paragraph 10 is inconsistent with the averment in paragraph 7 of the complaint. He has further submitted that the execution proceeding were pending before the concerned Court and that the Bank had learnt from reliable source that the respondent No.1/ complainant was trying to sell all the properties. He claims that the public notice was issued to safeguard the interest of the Bank as well as to caution the public that execution proceedings were pending in the Court and that if anybody deals with respondent No.1, the same shall be entirely at the risk of such person. It is further submitted that the process has been issued mechanically without even recording statement of the complainant under section 200 of Cr.P.C. He submits that the order is totally illegal and cannot be sustained.

7. The respondent No.1/complainant though served was absent and hence the learned APP was directed to assist the Court in disposing of the application. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

8. At the outset, it would be worthwhile to refer to the definition of defamation as defined under section 499 of the IPC which read 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.*

The ninth and tenth exception to section 499 IPC read as under:

> Ninth Exception.—Imputation made in good faith by person for protection of his or other’s interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.
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> *Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.”*

9. A plain reading of the aforesaid provision makes it clear that in order to constitute offence under section 499 of IPC there has to be 1) making or publishing imputation; 2) Imputation must be

made by words either written, spoken or by visible representation; 3) Imputation must be made with intention, to cause harm or with knowledge or having reason to believe that it will harm reputation of the person concerned. Furthermore such imputation would not be defamatory, if the same are covered by exceptions 1 to 10, which includes imputation made in good faith to protect his interest or to caution intended for good of person to whom conveyed or for public good as envisaged under exception 9 & 10 to section 499 IPC.

10. Reverting to the facts of the case, a perusal of the complaint clearly indicates that the respondent No.1 had availed loan of Rs.4,00,000/- from the applicant No.1/bank sometime in the year 1991. The complaint further reveals that the Bank had instituted Recovery proceedings against him. The complaint further reveals that by letter dated 9/5/2001, the respondent No.1/complainant had informed the General Manager of the applicant No.1/Bank that he was willing to settle the loan in accordance with the RBI scheme. The complainant had requested for time to pay the dues in installments. The complaint further reveals that the applicant No.2 had negotiated and subsequently by letter dated 9/5/2001 he had informed the respondent No.1/complainant that the dispute would be settled on payment of Rs.50,000/- in first installment and Rs.7,00,000/- in the

second installment. The first installment of Rs.50,000/- was to be paid on or before 10/6/2001 and the second installment of Rs.7,00,000/- was to be paid on or before 31/7/2001. In paragraph 7 of the complaint, the complainant had averred that Bank had insisted for post dated cheque for Rs.7,00,000/- and that the proposal was not agreeable to him and he made a remark to that effect on letter dated 9/5/2001 of the Bank.

11. The averments in para 7 of the complaint clearly indicate that the settlement proposal was not acceptable to the respondent No.1/complainant. These averments totally belie the averment in paragraph 10 wherein the complainant has stated that he had accepted settlement proposal.

12. Be that as it may, a plain reading of the complaint clearly indicates that the complainant had taken loan from the bank and failed to repay the loan. He had entered into settlement talks with the bank that the settlement proposal given by the bank was not accepted by the complainant. The public notice which is alleged to be defamatory was issued informing the public about pendency of the execution and steps taken or likely to be taken by the bank for recovery of the outstanding dues. The public was also notified that the

execution proceeding being Darkhast No.137/1998 was pending in the Court of Civil Judge S.D. Pune and that the Bank had applied for attachment of immovable property of the respondent no.1/complainant over which the Bank had charge. The bank had also notified that it would apply for attachment of other properties of the complainant and also the residential premises of the complainant.

13. The statements made in the public notice were factually correct and it cannot be said to be made with an intention of defaming the complainant. On the contrary, a plain reading of the notice reveals that it was issued to safeguard the interest of the bank. The applicant No.1 bank and had also conveyed to the public at large that anyone dealing with the property of the complainant over which the Bank had charge would be doing so at their own risk. The notice on the face of it does not contain any imputation which is defamatory within the meaning of Section 499 of the IPC. On the contrary, it was per-imminently issued to safeguard its own interest as well as public interest.

14. It is also submitted that the learned Magistrate has issued process without even recording statement of the complainant under section 200 of Cr.P.C. It is evident that the learned Magistrate has

acted mechanically without application of mind and without ascertaining whether complaint discloses essential ingredients of offence. Needless to state that summoning an accused in a criminal case is a serious matter and criminal law cannot set into motion as matter of course. In the case of ***M/s. Pepsi Food Ltd. & Anr. vs. Special Judicial Magistrate & Ors., 1998 (5) SCC 749*** the Apex Court has held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof and would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

15. In the instant case the complaint does not disclose essential ingredients of Section 499 of IPC. The learned Magistrate has issued the process mechanically without application of mind. In such circumstances, continuation of proceedings would lead to abuse of process of law.

16. Under the circumstances and in view of discussion supra the application is allowed. The impugned order dated 4/7/2001 directing issue of process against the applicant for offence punishable under section 500 of the IPC is hereby quashed and set aside.

Rule made earlier is made absolute.

(ANUJA PRABHUDESSAI, J.)