

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1935 OF 2015

Ramzan Ghori

.....Petitioner

V/s.

Ali Imam Hussain and another

....Respondents

Ms. Mallika Ingale i/b Mr. P. M. Bhansali Advocate for Petitioner.
Mr. Prashant Pandey i/b Mr. R. B. Mungekar for Respondent no. 1
Ms. A. T. Jhaveri APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : JUNE 15, 2016.

PC :

Heard.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein is seeking the relief of quashing of the order of issuance of process passed by learned Metropolitan Magistrate, 21st Court at Bandra in the complaint no. 1435/SS/2013 under section 500 of Indian Penal Code.
- 4) Being aggrieved by the said order, Petitioner had filed criminal revision no. 4 of 2015 before the Sessions Court, although the petitioner was aware that there is a delay of more than 3 years. Pursuant to the notice issued, the

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respondent appeared and demonstrated that there was a delay of more than 3 years and 6 months, an application seeking condonation of delay was filed thereafter, without there being a plausible explanation for the inordinate delay. No specific satisfactory reason was assigned for not seeking condonation of delay at the threshold. An attempt was made to mislead the Revisional Court and it reflects upon the conduct of the Petitioner. Same exercise was undertaken at the time of filing of the present criminal writ petition. Learned Sessions Court by Judgment and Order dated 09/04/2015 was pleased to dismiss the application seeking condonation of delay.

5) Learned Sessions Court had observed that applicant was served with a summons long before in 2011 and had filed revision after inordinate delay of 3 years 6 months and 24 days. The only ground shown by the applicant is regarding the negligence on the part of the earlier Advocate. There were no clear allegations that earlier Advocate committed any mistake or was not diligent there being proper timely instructions from the Petitioner. The contentions were vague. Learned Revisional Court had assigned justifiable reasons for dismissing the application. Apparently there was a suppression of facts. Being aggrieved by the said order, present writ petition was filed. On

08/05/2015, this Court (Coram: M. L. Tahaliyani, J.) had observed as follows:

“It is submitted by the learned counsel for the applicant that the revision application is filed against the impugned order. However, the delay was not condoned by the learned Sessions Court. In fact the petitioner/applicant should have moved this court simply for condonation of the delay instead of filing this writ petition”.

6) However, the matter was adjourned to 22/06/2015 and the Hon'ble Court was pleased to stay the proceedings in C.C. No. 1435/SS/2011 pending before learned Magistrate. Interim relief was extended from time to time. None appeared for Petitioner on 08/09/2015, however, in the interest of justice, interim relief was continued. None appeared for the Petitioner on 07/10/2015 and therefore, this Court (Coram: Smt. Sadhana S. Jadhav, J.) had vacated the interim relief granted vide order dated 08/05/2015. On 26/10/2015, it was submitted before this Court that the Court had not issued notice to the respondent and therefore notice was issued to respondent no. 1. On 01/12/2015, learned counsel for the petitioner had explored the possibility of settlement of issues. Interim relief was continued from time to time. Matter is being heard on merits today. At the threshold, this Court would like to express the opinion that although the matter has been pending for more than one year, office objections in respect of filing legible copies has not been

removed by the learned counsel for the petitioner.

7) In a nutshell the facts are as follows:

(i) Present petitioner and the complainant happen to be members of White Rose Co-operative Housing Society. On 03/01/2010 a notice was issued by the Secretary of the society to the present Petitioner. It was expressed that the approach of the Petitioner has become detrimental to the interest of the society and has caused inconvenience to the members of the society. It was also informed as follows:

“(1) You were holding the post of Joint Secretary from 1991 to 1994 and Secretary from the year 1995-1996 of the Managing Committee of the Society. As a Secretary you must have the knowledge for functioning of Society as per MCS Act 1960, Rule 1961 and Model-bye-law of Co-operative Housing Society.

As per Section – 72 of MCS Act 1960 AGM is supreme and members of Managing Committee have to act and function as per the approval and direction of AGM.

(2) You were the Secretary of the Society during 1995-1996. Following expenditure you have done without approval of AGM.

No.	Particulars	Expenditure (Rs.)
i)	Major Repair	7,29,750
ii)	Plastering Work	8640
iii)	Plumbing Work	61000
iv)	Painting work	2,80,850
v)	Painting of Door & Window	10751

vi)	Repair of machine room of Elevator	35000
vii)	Paid to Mr. S.B.N. Fernandes for faulty repair of terrace	14547
	Total	11,40,528.00
viii)	Unauthorized collection from five members and permitting them to carry illegal construction	80000
	Total	12,20,528.00

You are charged to make un-authorized payment to the parties, misuse of the fund of the Society and collection from the members without seeking approval of AGM”.

(ii) In the said letter, it was contended that the Petitioner had misbehaved with the Secretary of the society dduring the AGM on 06/08/1998 and had disturbed the proceedings of the said meeting and ultimately the meeting had to be cancelled. It appears that Petitioner had sub-let Flat No. B-4/14 without prior permission of the society. Agreement for sub-letting was not registered with a motive to evade payment of stamp duty. Petitioner was called upon to reimburse to the society the sum of Rs. 12,20,528/- which was spent from the funds of the society without any authority. The copy of the said letter was forwarded to Dy. Registrar, H/Ward West, Bandra (W) and Dy. District Registrar (III), MHADa, Bandra (E).

(iii) In reply to the said letter, Petitioner had retaliated by calling the complainant an “Intruder” “Fraud” and “Chor”. He was also referred as

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“Third rate crook”. An objection was raised for taking objections to 17 year old financial issues of the society. An allegation was made that complainant was running the society via watchman and one Mrs. Veena Chowdhary who is not a member, but was signing and handling the chqueues. The allegations were denied. It was also stated in the said letter as follows:

“Only to hide your current crime of non submission of accounts, on elections and making money from society for many years, you are taking out the issues”.

The question was put to the complainant:

“Have you gone mad or these are y our ways to threaten and frighten me!”

It was further stated:

“Unlike you, who may be educated and held position of respect as school principal, only to commit frauds and cheating, please go ahead and prove your records of earlier employments”.

(iv) The copy of the said letter was sent to Dy. Registrar, H/Ward West, Bandra (W) and Dy. District Registrar (III), MHADa, Bandra (E). Complainant was felt dis-reputed and defamed in the eyes of the society and therefore approached the Court of Metropolitan Magistrate at Bandra on 06/04/2011 and filed a complaint against the Petitioner.

(v) On 09/06/2011, learned Magistrate had issued process against present

petitioner under section 500 of Indian Penal Code. Application seeking condonation in filing revision application was dismissed. Learned counsel for the petitioner submits that petitioner was an illiterate person. It is also submitted that copy of the reply was sent to the office of Dy. Registrar, H/Ward West, Bandra (W) and Dy. District Registrar (III), MHADA, Bandra (E) only because the communication by the complainant was sent to the said authorities.

8) According to learned counsel for the petitioner the same would not amount to defamation. Learned counsel has placed implicit reliance upon the Judgment in the case of ***Emperor V/s Esufalli Abdul Hussein***. Needless to say that on the facts of the said case the citation would not be relevant for the simple reason that the said application was filed in a revision against the conviction of the petitioner on a charge of defamation. Learned counsel relied upon the observation of the Hon'ble Court as follows:

“The Expression used is undoubtedly defamatory and unless the case is covered by any of the exceptions the conviction would be justified. Having regard to the fact that an inquiry was being made by the police with reference to the application of the accused and the counter-application of his opponent Allibhai and that the expression was used in the course of that inquiry, it seems to be that the 9th exception to s. 499 would apply to this case”.

9) The said citation would not be relevant in the facts of the present case as inquiry is yet to proceed.

10) Learned counsel for the Petitioner has placed implicit reliance upon the Judgment of the Hon'ble High Court of Madras in the case of ***S. Rajagopalan V/s. Sevalaya***. The said petition for quashing of the complaint was allowed on the ground that complaint reflected pure and intemperate language and it can be read as an emotive outburst. The said citation cannot be applicable in the present case as it is not the case of emotional outburst, but specific allegations are levelled against the complainant and adjectives such as “Fraud” “Intruder” “Chor” has been made. Contents of the reply would also reflect that complainant was labelled as habitual offender or a hardened criminal. The same would not be relevant in the present case.

11) Learned counsel for the Petitioner has also placed reliance upon the Judgment of this Court in Criminal Writ Petition No. 122 of 2009 wherein this Court had observed that an inquiry was pending against the accused. The letters contained obscene material and defamatory allegations against the character of daughter of accused no. 1 were received by the members of the society and therefore accused no. 1 and other members of the society had

approached the police for guidance. Nexus to the police was treated as “Not defamatory” and hence petition was allowed.

12) The facts of the present case are peculiar. Today, learned counsel for the Petitioner had also made an offer that she would request the complainant to accept the apology. Offer letter is perused by this Court. It is specifically contended in the offer letter that petitioner is an illiterate person. He had approached the typist who typed the letter for him. He disowned the contents of the said letter. This offer smacks of malafides.

13) There is no doubt that damaging the very character of a person and disreputing him by referring him as fraud, conveying the same to the authorities would amount to defamation as learned counsel for the respondent submits that as on today, no criminal case was ever registered against the complainant or that his past was tarnished in any manner.

14) In view of all these aspects, petition seeking quashing of order of issuance of process is sans merits and hence, deserves to be dismissed. Hence, following order.

(i) Writ petition stands dismissed.

(ii) Interim relief granted by this Court vide order dated 08/05/2015 stands

vacated.

- (iii) Office to communicate this order to the concerned court, forthwith.
- (iv) Learned Magistrate shall proceed with the case on its own merits without being influenced by the observations by this Court.
- (v) Leave to add/amend the cause title of the petition. Amendment to be carried out forthwith.
- (vi) Learned Magistrate shall commence with the proceedings in the present case within 4 weeks from the date of receipt of this order.
- (vii) Rule is discharged.
- (viii) Writ petition stands disposed of.

(SMT. SADHANA S. JADHAV, J.)