

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 2513 OF 2014

Smt. Jyoti Mansing Walvi

..Petitioner

v/s.

Smt. Prabhavati Maruti Kamble
& Ors.

..Respondents

Mr. G.M. Savagave for the Petitioner.

Mr. Manoj Patil for the Respondent No.1.

Mr.V.V.Gangurde, APP for the State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : AUGUST 29, 2016.**

P.C.

1. Rule. Rule made returnable forthwith. By consent of parties, matter is taken up for hearing.

2. The petitioner herein was a complainant in Criminal Case No. 26 of 2010(subsequently registered as 535 of 2010), filed before the JMFC at Jaysingpur. The petitioner herein was an employee of LIC. She has alleged that the respondent no.1 had sent several unanimous letters to her senior officers, as well as to the bank. The petitioner

had further stated that the banks had refused to sanction loan to her. Furthermore, her senior officers started looking at her with distrust and there was misunderstanding between her and her senior officers. The complainant had further alleged that the respondent no.1 had also sent to her some unanimous greeting cards with defamatory contents. The petitioner/complainant had stated that she had made her own enquiries and had learnt that the said unanimous letter and the greeting cards were sent by the respondent no.1. The respondent no.1 had thereafter admitted that she had sent the said letters from 2004 to 2009 so as to cause misunderstanding in the mind of her superiors. Her superiors had enquired into the contents of the said unanimous letters and had stopped her increment as well as promotion for a period of four years. The petitioner-complainant has stated that her image was lowered in the eyes of the public at large, and she had sustained financial loss because of the unanimous letters sent by the respondent nos.1 and two others. The petitioner had therefore filed a complaint for the offence under Section 500 of IPC.

3. The statement of the complainant was recorded and the learned Magistrate by order dated 30.10.2010 held that there was sufficient material to issue process against the respondent no.1 accused for the offence under Section 500 of IPC and thus issued process against the respondent no.1.

4. Being aggrieved by the said order, the respondent no.1 filed criminal Writ Petition No.1935 of 2011. By order dated 1.7.2013 the respondent no.1 was allowed to withdraw the said writ petition with liberty to file appropriate proceeding before the Sessions Court. Pursuant to the said order, the respondent no.1- accused filed Revision Application No.26 of 2013 before the Sessions Court at Jaisingpur. By order dated 6.3.2014 the learned Sessions Judge allowed the revision application filed by the respondent no.1 accused and set aside the order dated 30.10.2010 passed by the learned Magistrate in Criminal Case No.535 of 2010 (old no.26 of 2010). Being aggrieved by this order, the petitioner-complainant has filed the present writ petition.

5. Heard Mr.Savagave, the learned Counsel for the petitioner and Mr.Patil, the learned Counsel for the respondent no.1-accused. Perused the records and considered the submissions advanced by the learned counsel for the petitioner and the respondent no.1.

6. At the outset it may be mentioned that in the Case of ***Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate and Ors***, the Apex Court has observed as under :-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. 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 allegations made in the complaint and the evidence both oral and documentary in support thereof and would that 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.”

7. It is also to be noted that this Court in *Viraf N. Chiniwala v. Mrs. Amy N. Irani & Abnr.* {2014 ALL MR (Cri.) 2832 has held that the plain reading of Section 199 sub clause (3) along with Section 200 of Cr.P.C. clearly indicates that it is not sufficient only to give details in the complaint as contemplated under Section 199 (3) of Cr.P.C., but the complainant is required to give particulars under Section 200 Cr.P.C. and in the absence of such particulars, the Magistrate cannot issue process mechanically. It was also held that the subjective satisfaction of the Magistrate on the basis of the examination of witnesses must be reflected in the order of issuance of process.

8. In the instant case, the petitioner-complainant had averred in the complaint that respondent no.1-accused had sent some unanimous letters to her superior officers and to the nationalized banks. She had further stated that she had subsequently learnt that the said letters were written by the respondent no.1 and that the

respondent no.1 had signed the undertaking (hamipatra), wherein she had acknowledged having written the said letters. It is pertinent to note that neither in the complaint nor in the verification statement the petitioner-complainant had disclosed the contents of the said unanimous letters which were allegedly written by the respondent no.1. The complainant-petitioner had also not produced before the court the said letters based on which the process under Section 500 was issued. The only material which was placed on record by the complainant is an undertaking wherein the respondent no.1 had allegedly admitted having written the said unanimous letters. The said undertaking (hamipatra) also does not contain details of the letters which were allegedly written by the respondent no.1. It is thus evident that the complaint as well as the verification statement does not disclose any particulars of the defamatory statement allegedly made by the respondent no.1 accused.

9. The complaint merely stated that some unanimous letters were received by the superiors of the petitioner herein. There is no material on record to indicate that the said letters were defamatory

and that the same were written by the respondent no.1 accused.

10. The learned Magistrate has issued process mechanically without ascertaining whether the allegations in the complaint, taken at its face value and accepted in its entirety disclose any offence as against the respondent accused. Under the circumstances, no case is made out to interfere with the impugned order of the learned Sessions Judge. The petition is devoid of merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)