

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

CRIMINAL WRIT PETITION NO. 3584 OF 2015

Dr. Sanjay Bhalchandra Londhe

... Petitioner

vs.

Dr. Uma Sanjay Londhe and anr.

... Respondents

Mr. M. G. Shukla i/by Santosh H. Chari, Advocate for the petitioner.

Ms. Pallavi Pargaonkar, Advocate for respondent No.1.

Mr. Deepak Thakare, Additional Public Prosecutor for the State.

Coram : Smt. R. P. SondurBaldota, J.

Date : 23rd February, 2016.

P. C. :

1. The petitioner is an Orthopedic Surgeon associated with various private and charitable hospitals in Mumbai. He is a gold medalist in M.B.B.S. exams and has done his Master of Surgery in Orthopedics from Mumbai. He is also FRCS from the Royal College of Surgeons of Glasgow and Royal College of Surgeons of Ireland. In addition, he holds, MCH (Orth.) from the University of Liverpool. Respondent No.1 is his wife. There are matrimonial disputes going on between the parties and proceedings are pending in different Courts. It appears that in order to resolve the marital discord both had consulted a marriage counsellor of the choice of the

respondent, one Ms. Minnu Bhosale of “Heart to Heart Counselling Centre”. Ms. Bhosale referred both the parties for Psychological tests by Ms. Meherangiz Press, the Clinical Psychologist, attached to her Centre. She conducted evaluation test upon the petitioner on 31st July, 2010 and gave her report diagnosing that petitioner suffers from Bipolar 2 (Hypmanic) Disorder. The report states that the intellectual level of the petitioner is below average. Being a Doctor, the petitioner was not satisfied with the findings of the psychological evaluation test. He therefore consulted Dr. Nilesh Shah, Professor and Head of the Department, Department of Psychiatry, L.T.M.G.H. (Sion Hospital) with a request to clinically examine him and give the expert's opinion. Dr. Shah examined and opined that clinically there was no evidence of any Psychiatric Disorder with him. The petitioner then confronted Ms. Press with the report, whereupon Ms. Press and Dr. Minnu Bhosale made their further report dated 19th August, 2010 and tendered an unconditional apology to him. In their letter dated 11th September, 2012 they claimed that their report was not a Psychiatric Diagnosis and it was only provisional diagnosis, which was certainly not for using as evidence in a Court of law. They further accepted that qualified Psychiatrist's evaluation would naturally supersede their report.

2. The respondent, made use of that report in her complaint lodged with Vile Parle Police Station for alleging “Mental as well as physical harassment by the husband and other in-laws”. She has also filed proceeding under the Protection of Women from Domestic Violence Act, 2005 in the Court of Metropolitan Magistrate, 65th Court Andheri, Mumbai.

3. In the above facts, the petitioner filed Private Complaint No. 457/SS/2014 in the Court of Additional Chief Metropolitan Magistrate, 65th Court Andehri, Mumbai for the offence punishable under Section 500 I.P.C. According to the petitioner, reference by the respondent in her complaint to police to the report of Ms. Press at para 53 thereof is defamatory. He alleges that by that complaint the respondent has defamed him amongst the police within whose jurisdiction he is a renowned practicing doctor. She has made the police and the general public believe that the petitioner is a person having severe mental disorder and anger management problem. The petitioner's statement in verification was recorded. Thereafter, by the order dated 3rd May, 2014, the learned Metropolitan Magistrate refused to issue process under Section 500 of I.P.C. against the respondent and dismissed the complaint. Being aggrieved by the order, the petitioner approached the Sessions Court by Criminal Revision Application No.789 of 2014. The

Sessions Court dismissed the revision application by its order dated 25th June, 2015. Both the Courts below have held that the imputation by the respondent cannot be said to be defamation. It has been observed that the findings of Ms. Press have been only provisional and the findings of Doctor Shah can always be used by way of defence in the matrimonial proceedings.

4. The respondent herself is a medical practitioner. Therefore, she would be expected to know the difference in the value of the report by Ms. Press on the psychological well-being of the petitioner and the report by Dr. Shah, Professor and Head of the Department of Psychiatry, L.T.M.G.H. It is unfortunate that she has made a reference in her complaint to the report by Ms. Press to create an impression that the report is correct. This is done by her despite the further correspondence and the letter of apology given by both Ms. Bhosale and Ms. Press. However, question is whether this act on her part will amount to an offence punishable under Section 500 I.P.C. The courts below have held that the reference in the complaint being reference to the facts actually having taken place, the same will not amount to defamation per se. In that case, it was necessary for the petitioner to allege in his complaint that the imputations had, in fact, caused him damage to his reputation in some way. In the absence thereof

it cannot be said that the offence punishable under Section 500 of I.P.C. is complete. The view taken by the Courts below is the correct view in law. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]