

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.607 OF 2006

- 1) Dinkar Keshvrao Raikar
Age: 49 years, Occu.: Editor, Daily Lokmat,
Jalna Road, Aurangabad.
- 2) Satish Vasantrao Joshi
Age: 41 years, Occu.: Dist. Representative,
Daily Lokmat, Gandhi Park,
Parbhani. **..Applicants**

Verus

- . Mirza Afzal Baig s/o. Mirza Anvar Baig
Age: 41 years, Occu.: Advocate,
R/o. Gulshan Bagh, Phule Colony,
Parbhani. **..Respondent**

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Advocate for Applicants: Mr.Satyajit Bora
Advocate for Respondent: Mr.S.T.Veer

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CORAM : PRAKASH D.NAIK, J.
DATED : 09.11.2017

ORAL JUDGMENT:-

1) The applicants were impleaded as accused in complaint filed by the respondent for offences punishable under Sections 500 and 501 of the Indian Penal Code. The applicants have invoked the inherent powers of this Court

under Section 482 of the Code of Criminal Procedure to challenge the said proceedings.

2) The complainant is a practicing Advocate. The newspaper viz. 'Dainik Lokmat' has large circulation in Parbhani District. The accused No.1 is Editor-in-chief and accused No.2 is Editor of the said Newspaper. The accused No.3 is the Printer and accused No.4 is District Reporter. In the issue of the said newspaper of 2.7.2005, the accused had published news in relation to the assault on the Advocates and closure of functioning of the Court at the instance of the Advocates. The news item refers to incident, wherein purportedly on 30.6.2005, two Advocates were allegedly assaulted by some persons. It was also mentioned that two Advocates were detained in Nanalpeth Police Station lockup uptil 6.00 A.M The contention of Advocates Association is that, the Advocates were assaulted by Police. The said news item include the name of the complainant as one of the Advocate. It was also stated that, the Advocates were

medically examined and one of them was found to have consumed Alcohol and the case was registered under Section 85(1) of the Bombay Prohibition Act. This information was provided by the Nanalpeth Police to the said Newspaper. It is the case of the complainant that he is not connected with the incident reported in the said news item and the news item has caused harm to his reputation, which amounts to defamation. The complainant has stated that, in fact, Advocate Gulam Dastgir and Advocate Sajid were involved in the incident and the accused had knowledge about incident. In spite of that, the news of applicant was published in the News report. The complainant, therefore, filed a complaint.

3) The learned Magistrate after recording verification statement and statements of witnesses issued the process against the applicants and two other accused for the offence punishable under Sections 500 and 501 of the Indian Penal Code. The accused preferred Criminal Revision Application before the Court of Sessions. The

application of the two other accused was allowed by the Court of Sessions vide order dated 9.12.2005. However, the application of the present applicants was rejected. Hence,, the applicants have approached this Court by preferring the present application.

4) The learned counsel for the applicants submitted that the offence as alleged punishable under Sections 500 and 501 of the Indian Penal Code, is not made out against the applicants. The learned Magistrate has committed an error in issuing the process against the applicants. The Sessions Court has also erred in rejecting the Criminal Revision Application of the applicants. It is submitted that the requisite ingredients to constitute an offence under Section 499 of the Indian Penal Code are completely absent in the impugned complaint and therefore, the Court ought not to have issued process for the said offence. The learned Magistrate has mechanically issued the process without looking into the requirements of Section 499 and 501 of the Indian Penal Code. It is submitted

that to constitute the offence as alleged, there has to be an intention to cause harm to the reputation of the complainant, which is completely absent in the present case. It is submitted that the Courts below failed to appreciate the context in which the news item was published in newspaper. The applicants, who are concerned with the said daily newspaper have no animosity against the complainant and in due course, the news item was published with a view to depict the incident, which had occurred as stated in the news item. It is submitted that the news item does not cause any harm to the reputation of the complainant, and on the contrary, the complainant and other persons were reported to be the victim of the circumstances. The news items refer to the incident of assault on the two Advocates and the detention of the said persons by the Police. It is submitted that the news item does not indicate in any manner that the complainant had committed any act, which causes harm to their reputation. It is further submitted that the clarificatory statement was also published

subsequently by the said newspaper wherein apology was tendered stating that the name of the complainant has been wrongly reflected in the said news report. It is therefore, submitted that the news item taking as it is, in no manner constitute offence punishable under Sections 500 and 501 of the Indian Penal Code.

5) The learned counsel for the applicants relied upon several decisions of the Apex Court as well as this Court in support of his submission that process issued against the applicants is required to be quashed and set aside. The learned counsel for the applicants relied upon the following decisions:-

(a) Maksud Saiyed Vs. State of Gujarat and Ors., reported in 2008(5) SCC, 668.

(b) Sanatan Sanstha Vs. State of Goa and Anr., reported in 2007, Cri.L.J., 2216.

(c) Valmiki Faleiro Vs. Mrs.Lauriana Fernandes and Ors., reported in 2005, Cri.L.J., 2498.

(d) *Leelamma Thomas Vs. State of Kerala (MANU/KE/2064/2014)* .

(e) *Vishveshwar Bhat Vs. K.N.Ashok (MANU/KA/1522/2011)* .

(f) *Bennett Coleman & Co.Ltd. and Ors. Vs. K.Sarat Chandra and Ors. (MANU/AP/1026/2015)* .

(g) *Mr.Umar Abid Khan & Ors. Vs. Vincy Gonsalves Alias Vincent Gonsalves and others, reported in 2010(1) ALL MR, 74.*

6) The learned counsel for the respondent-complainant submitted that there is no substance in the submissions advanced by the learned counsel for the applicants. The learned Magistrate has issued the process after going through the contents of the complaint, the documents annexed to the complaint, the verification statement and the evidence before the Court. The order of issuance of process is prima-facie opinion of the Court, which is based on the material on record. The grounds raised by the applicants cannot be adjudicated at this stage and at

the most, they can raise their defence at the time of trial. The news report clearly mentions that the Advocates were assaulted and the Courts were closed. Thereafter, the report also refers to the detention of the Advocates in the custody. It is submitted that on reading of the said newspaper, an impression is created in the mind of the readers that the Advocates, who were referred to therein including the complainant, were involved in the said incident and thereby the said report has caused harm to the reputation of the complainant. The learned Magistrate has therefore, rightly issued the process against the applicants. Prima-facie, there is sufficient material on record to issue the process and therefore, it is not necessary to interfere in the order of the process. It is further submitted that the complainant is not at all concerned with the incident, which is referred in the news item, however, the impression is created that the complainant was involved in the incident, which is reflected therein. It is further submitted that the Sessions Court has considered

the issues raised by the applicants in the Criminal Revision Application and the same was rejected for the reasons stated in the said order. The applicants have not made out any case to quash and set aside the order of process and the order of the learned Sessions Court rejecting the application and the impugned proceedings, which are initiated against the applicants. It is submitted that there is voluminous evidence to support the complaint and he must be given an opportunity to adduce the evidence in trial and therefore, this is not a stage to deal with the defence raised by the applicants in the present application. It is also submitted that merely because apology was tendered in a subsequent news item, the accused cannot be absolved of the charges levelled against them. The same was tendered belatedly. The harm was caused to the reputation of the complainant in the first news item. Only upon clarificatory statement and apology, which is reflected subsequently, the offence committed by therefore cannot be wiped out. The complainant has also filed affidavit-in-reply

opposing the relief sought by applicants. The learned counsel for the respondent-complainant placed reliance upon the following cases:-

(a) Balraj Khanna and others Vs. Moti Ram, reported in 1971, SC, 1389.

(b) Vijay Singh Mankotia Vs. Nehar Singh and anr., reported in 2000, Cri.L.J., 1159.

(c) National Insurance Company Ltd. and others Vs. Narendra Kumar Jhanjhri, reported in 1990, Cri.L.J., 773.

7) I have gone through the documents on record. On perusal of news item dated 2.7.2005, it is apparent that the news item refers to the incident of 30.6.2005. It is stated that two Advocates were assaulted by 10-15 persons and the complaint was lodged with the Police Station. It is further stated that Advocates Association had protested against the incident of assault. It is also stated that the Advocates Association had also approached the Superintendent of Police and protested the incident

of assault and demanded that action be initiated against the persons, who had assaulted the said Advocates. They were assured that, enquiry in respect to said incident would be conducted and action will be initiated against the accused. It was further stated that in the mean time the Advocates, who were assaulted were taken to the Nanalpeth Police Station and they were made to wait at the Police Station till 6:00 A.M. It was also reported that, it was contention of Advocates' Association that, two policemen on duty had assaulted the advocates. It was further reported that, the Police gave information to the Newspaper that, there was medical examination of the Advocate Gulam Khan and Advocate Baig and it was reported that one of the Advocate Mr.Gulam Khan had consumed liquor and the action against him was initiated by the concerned Police Station. In the news item, the name of the complainant is reflected as one of the persons, who was assaulted by the miscreants. The news item with regard to intoxication of liquor was in respect of another person and not of the present complainant.

Reading the complaint as it is, it does not appear that the present complainant has been attributed any role, which would cause any harm to his reputation. The News item reports the version of Advocates as well as Police. The information about Medical Examination and action taken by Police was reported by Police which is clearly spelt out in the Notice. Reading the News item it does not appear that there was any malice or intention to defame on the part of newspaper. It depicts version of both sides. It is also pertinent to note that in pursuant to the said news item, notice was issued by the complainant to the said newspaper and on 22.7.2005, the clarificatory report was published by said newspaper 'Dainik Lokmat' in which it was clarified that the complainant is not connected with the said incident and therefore his name has been reflected in the earlier news item inadvertently. It is stated that in the clarificatory report, the newspaper tendered apology for the inconvenience and embarrassment caused to the complainant.

8) In the light of the said clarificatory statement published on 22.7.2005, it is apparent that there was no intention on the part of the newspaper in causing any harm to the reputation of the complainant, which is pre-requisite for initiation of proceedings under Section 499 of the Indian Penal Code. It is true that the defence of the accused is required to be agitated during the trial and the Court may not consider the same while exercising powers under Section 482 of the Code of Criminal Procedure or supervisory powers under Article 227 of Constitution of India. However, taking the news item as it is if the required ingredients to constitute offence under Section 499 or 501 of the Indian Penal Code are absent, then certainly the Court can exercise inherent powers since it would be abuse of law to continue such proceedings against the accused. The complainant has stated in the complaint that, he was not concerned with the incident and that some other advocates were involved in the incident, and he has given the name of the said Advocates. This shows that he admits the incident and

that his name is wrongly stated in news item. The Newspaper had stated that the name was mentioned inadvertently. Taking into consideration the factual aspects, there is nothing on record to show that the name of complainant was mentioned deliberately. It is a reporting of incident and not an imputation published with intent to defame and there is no reason to believe that it would cause defamation.

9) It is pertinent to note that the applicants are concerned with the said newspaper 'Dainik Lokmat'. There is no animosity against the complainant and the news item dated 2.7.2005 is apparently reported by referring name of the complainant. In the clarificatory statement apology was tendered in news item dated 22.7.2005. What is required to be seen is that whether there was any intention to cause harm to the reputation of the persons against whom the reporting was done. Section 499 of the Indian Penal Code clearly stipulates that the imputation has to be done with intention to cause harm, or knowing

or having reason to believe that such imputation will cause harm to the reputation of such person. The news item does not in any way indicate that the complainant is shown in bad light. On the contrary, the news item refers to the fact that the complainant is a victim, who was assaulted by some persons, which was protested by Bar Association. The tenor of the said news item appears to be to bring to the news that there was an incident of assault, which was protested by the Bar Association and representation is being made to the superior Police Officer to initiate action against the persons, who assaulted the Advocates. Therefore, it does not appear that the reporting was done by the applicants with an intention to cause harm to the reputation of the complainant.

10) In the decisions relied upon by the applicants in the case of *Maksud Saiyed Vs. State of Gujarat and ors.* (supra), it has been observed in paragraph No.9 of the said Judgment that an inadvertent mistake committed by

the bank in referring to the case being pending before DRT instead of City Civil Court cannot give a rise to a cause of action for filing a complaint for offence punishable under Sections 500 and 501 of the Indian Penal Code.

11) In the decision of this Court in case of *Sanatan Sanstha* (supra), it has been observed that the essence of offence of defamation is the harm caused to the reputation of a person. Character is what a person actually is and reputation is what neighbours and others say he is. In other words, reputation is a composite hearsay and which is the opinion of the community against a person. Everyone is entitled to have a very high estimate of himself as the complainant does in the said case but reputation is the estimation in which a person is held by others. The commission of offence of defamation or publishing any imputation concerning any person must be 'intending to harm or knowing or having reason to believe that such imputation will harm the

reputation of such person'.

12) In an other decision relied upon by the applicants in the case of *Valmiki Faleiro* (supra), this Court had made similar observations. In paragraph 22 of the said decision, it was observed that the essence of offence of defamation is the harm caused to the reputation of the person.

13) In the case of *Leelamma Thomas* (supra), the High Court of Kerala had dealt with the complaint for an offence under Section 499 of the Indian Penal Code wherein the requirements to constitute the offence under Section 499 of the Indian Penal Code are discussed. It has been observed by the Court that wrong photograph was published and on account of that a complaint was filed alleging defamation. The Court observed that it was a bonafide mistake and there was no willful intention of causing loss of reputation.

14) Similarly, in another decision, in the case of *Vishveshwar Bhat* (supra), the Karnataka High Court had dealt with the requirements of Section 499 in detail. The facts of the said case indicate that the newspaper had mistakenly given wrong name of person by changing initials. Hence, it was observed that there was no intention to cause harm to complainant.

15) In the decision relied upon by the Advocate for the applicants in the case of *Bennett Coleman and Co. Ltd. and ors.* (supra), the Andhra Pradesh High Court has considered the requirements of offence of defamation. In paragraph No.7, the said Court has discussed the law relating to the defamation. Several decisions were referred to while dealing with the complaint, which was under challenge. The Judgment in detail deals with essence for the offence of defamation. It also refers to several decisions dealing with the essentials of defamation. There must be defamatory statement, the defamatory statement must be understood by the right

thinking or reasonable minded persons, there must be publication of the defamatory statement, that is to say, it must be communicated to some person other than the plaintiff himself, and in case of slander either there must be proof of special damages or the slander must come within the serious classes of cases in which it is actionable *per se*. The Court has distinguished between remedy of civil law and criminal prosecution. In paragraph No.12, it is observed that, the very wording of the said penal provision reflects that imputation is intending to harm or knowing or having reason to believe that it will harm the reputation of such person. Prima-facie, the case for defamation is required to be made out. The Court referred to several decisions of the Apex Court, viz. *Jawaharlal Darda Vs. Manoharrao Ganpatrao Kapsikar*, reported in **1998(4), SCC, 112**, as well as decision of the Supreme Court in case of *Rajendra Kumar Sitaram Pande Vs. Uttam*, reported in **1999 (3) SCC, 134**. Taking into consideration the ratio laid down in the aforesaid decisions, it is apparent that to

constitute offence of defamation and to initiate prosecution for the said offence, the requisite ingredients under Section 499 of the Indian Penal Code are required to be spelt out.

16) The learned counsel for the complainant relied upon the decisions, which are referred to herein above. In the case of *Balraj Khanna and others. Vs. Moti Ram* (supra), the Apex Court has considered the fact that the exception, if any, which are stipulated under Section 499 can arise only after commencement of trial. It has to be seen whether prima-facie case is made out on the basis of the complaint. Relying upon the said decision, it was contended by the learned counsel for the complainant that in the present case it would not be open to the Court to interfere, as the Trial Court has issued process on the basis of prima-facie opinion, which is required to be considered at the stage of issuance of process. The grounds raised by the accused are to be considered at the time of trial.

17) In other decision in the case of *National Insurance Co. Ltd.*, (supra) the Patna High Court has considered the issue relating to quashing of similar proceeding. It has been observed that the proceeding can be quashed only if the chances of conviction are bleak and no case is made out, in all other circumstances, the complainant must be given an opportunity to try his case by adducing evidence.

18) In the decision of the *Vijay Singh Mankotia Vs. Nehar Singh and another* (supra) relied upon by the complainant, the Court has observed that the contents of the complaint and newspaper clippings attached therewith prima-facie discloses commission of offence under Section 500 of the Indian Penal Code. The complaint, therefore, cannot be quashed and set aside. It was submitted by the learned counsel for the complainant that in the present case in support of the complaint, the witnesses were examined by the complainant and thereafter, the process was issued by the Trial Court.

19) I have given anxious consideration to the decisions relied upon by the counsel for the complainant. It is pertinent to note that in the present case, by reading the news item itself, I do not find any ingredients to constitute offence of defamation. On reading alleged news item itself and on the basis of facts and circumstances in the present case, it is clear that no case for offences of defamation is made out. The essential ingredients to constitute offence of defamation and offence under Section 501 of Indian Penal Code are lacking in the present proceedings and for the reasons stated herein above, I am of the opinion that the proceedings against the applicants cannot be continued. In the circumstances, the proceedings are required to be quashed and set aside. Hence, I pass the following order:

ORDER

(I) Criminal application No.607 of 2006 is allowed.

(II) The order of issuance of process dated 23.8.2005 passed by the learned Chief Judicial Magistrate, Parbhani in SCC No.1247 of 2005 and the order passed by the Sessions Court dated 9.12.2005 in Criminal Revision Application No.140 of 2005, alongwith proceedings in SCC No.1247 of 2005 are hereby quashed and set aside.

[PRAKASH D.NAIK, J.]