

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

WRIT PETITION NO. 1579 of 2002

1. The State of Maharashtra
at the instance of Lieut. Col. Mukund
Dattatraya Thipse Zilla Sainik Welfare
Officer, Zilla Sainik Welfare office,
Collectorate Compound, Pune-411001 & anr.
2. Colonel Bhagatsingh Dattajirao Deshmukh
Aged 52 years, Director, Department of
Sainik Welfare, Govt. of Maharashtra,
Bungalow No.9, Shastri Nagar, Yerwada,
Pune - 411 006. ... Petitioners

vs.

Balaso Vithoba Jadhav, Ex-serviceman
Aged 39 years, Occupation Service
Resident of Plot No. 40, Porwal Park,
Mental Hospital Corner, Yerwada,
Pune - 411 006 ... Respondent
(Ori. Complainant)

Ms. Pallavi Dabholkar, A.P.P. for the State/petitioner No.1.
Mr. G. H. Keluskar, Advocate for petitioner no.2.
Mr. Sushil Inamdar i/by Mr. Madhav Jamdar, Advocate for
the respondent.

CRIMINAL APPLICATION NO. 4266 OF 2002

1. Lieut. Col. Mukund Dattatraya Thipse
Ages 55 years, Occu. Service,
Zilla Sainik Welfare Officer,
Zilla Sainik Welfare Office,
Collectorate Compound, Pune-411 001.

2. Colonel Bhagatsingh Dattajirao Deshmukh
Aged 52 years, Director, Department of
Sainik Welfare, Govt. of Maharashtra,
Bungalow No.9, Shastri Nagar, Yerwada,
Pune - 411 006. ... Applicants

vs.

1. Balaso Vithoba Jadhav, Ex-serviceman
Aged 39 years, Occupation Service
Resident of Plot No. 40, Porwal Park,
Mental Hospital Corner, Yerwada,
Pune - 411 006
2. State of Maharashtra ... Respondents

Mr. G. H. Keluskar, Advocate for the applicants.

Mr. Sushil Inamdar i/by Mr. Madhav Jamdar, Advocate for
the respondent no.1.

Ms. Pallavi Dabholkar, A.P.P. for the State/respondent no.2.

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

Date : 23rd February, 2017

JUDGMENT :

1. These two matters are directed against the same order and are at the instance of the same persons. Criminal Application No.4266 of 2002 is filed by the accused in Criminal Case No. 1355 of 2001 on 26th November, 2002. Criminal Writ Petition No. 1579 of 2002 is filed by the State on 18th November, 2002 for the benefit of the two accused. The petitioners being the accused in the private criminal complaint, the State Government could not have taken up cudgels on their behalf. It is obvious that this petition was managed by the accused for obvious purpose of saving the legal expenses.

2. The petitions challenge the concurrent findings of the Courts below as regards the sufficiency of the material in the complaint filed by the respondent being SCC No. 1335 of 2001 pending in the Court of Judicial Magistrate, First Class, Khadki, Pune for issuance of process to the petitioners for the offence punishable under Section 500 of Indian Penal Code.

3. The complaint as well as the accused are Ex-servicemen. The complainant is working for welfare of Ex-servicemen. He is the General Secretary of Maji Sainik Vikas Samiti, Maharashtra, PUne. Petitioner no.1 is District Sainik Welfare Officer and petitioner no.2 is the Director of Rajya Sainik Welfare, Maharashtra State, Pune. They have been re-employed in Class-I service of State of Maharashtra. The complaint filed by the respondent alleges making of and publication of imputations on three occasions. The first incident is dated 16th May, 2001. On that day, one Jyoti Dhumal had approached petitioner no.1 in connection with her husband's pension. When she mentioned it to him that she had also approached the complainant, he became upset and said that the complainant is not an ex-serviceman. He causes obstruction in the work. He also demanded to know what was the bribe taken by the complaint. This utterance was allegedly made in full view of the public in the office. The second incident dated 19th July, 2001 on which date the petitioners sent an application to Vishrantwadi police station stating that the respondent causes obstruction in

their office work. He makes false allegations by using bad words. He is also responsible for spreading terror in Pune city by resorting to "Dadagiri and Gundagiri". He collects ransom, exploits and incites the widows of Ex-serviceman. They also stated that he has been blacklisted by the State of Maharashtra. The third incident is dated 29th April, 2003 when the petitioners published on notice board of their office, that a confidential letter written by one Bhagatsingh Deshmukh recommending blacklisting of the complainant.

4. There can be no doubt that the imputations on the part of the petitioners are per-se defamatory and there has been publication of the imputations. As such there is sufficient material on record to proceed against the petitioners. However, Mr. Keluskar appearing for the petitioners submits that they being Government Servants are entitled to protection under Section 197 Criminal Procedure Code against their prosecution. The provision of Section 197 Criminal Procedure Code reads as under :

"S.197 Prosecution of Judges and public servants -

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction -

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of the Union,

of the Central Government;

(b) in the case of a person who is employed or, as the case may be was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the forces charged with maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under Clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on

the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under Clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.]

(4) The Central Government or the State Government as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate, or public servant is to be conducted, and may specify the Court before which the trial is to be held."

Bare reading of the provision is sufficient to note that the protection available to a Government Servant thereunder is only to the acts undertaken by him in discharge of his official duties. By no stretch of imagination can it be said that the utterances or imputations by the petitioner and their publication, was in discharge of the office duties of the petitioners. Therefore, there is no merit in the argument of Mr. Keluskar for requirement of prior sanction to prosecute the petitioners. Hence, the writ petition and the application are disposed off with costs. The applicants/petitioners to pay costs quantified at Rs.10,000/- to the respondent/original complainant.

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