

sbw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3337 OF 2014

Balasaheb Tukaram Deshmukh

... Petitioner

vs.

Bennett Coleman & Co.Ltd. & Ors.

... Respondents

Mr. Pramod N. Patil a/w Govind Solanke for the Petitioner.

Mr. Mihir Desai a/w Mihir Joshi i/b. Vijay Hiremath for Respondent nos.1 to 6.

Mr. V. B. Konde-Deshmukh, APP, for the Respondent-State.

CORAM : A.K. MENON, J.

DATE : 21st JUNE, 2017

P.C.

1. By this criminal writ petition, the petitioner challenges the order dated 24th June, 2013 passed by the Additional Sessions Judge, Thane in Criminal Revision No.20 of 2014 whereby the Revision Application was allowed, quashing and setting aside an order of issue of process dated 14th December, 2012 in S.C.C. no.1938/12. The complaint as originally filed against the petitioner nos.1 to 6 before the Magistrate proceeded on the basis that on Saturday 5th November, 2011 a news article came to be published by the respondent no.1 company in the daily English edition of the newspaper "The Times of India" reporting the fact of arrest of the petitioner in relation to an Anti Corruption Bureau investigation into a case alleged disproportionate assets. A copy of the news article appears at

Exhibit A to the petition. Paragraph 3 of the article also contained the following statement:-

“There was also a case of dowry harassment against him by his estranged wife in Thane. “We have no idea what happened to that case,” an officer said.”

2. Mr. Patil, the learned counsel appearing on behalf of the applicant states that the impugned order has proceeded on the basis that the impugned report was merely a case of mis-reporting. According to him, all the requirements of Section 499 have been complied with. The report makes an imputation in respect of the petitioner which was intended to harm his reputation. Mr. Patil further submitted that the case of the petitioner in the complaint itself was that the report was intended to harm his reputation and was published with full knowledge that such a report would harm his reputation. He submitted that the contention of the respondent no.1 that it was merely reporting a fact is incorrect inasmuch as the portion of the report pertaining to dowry harassment has no basis in fact. He submitted that as a matter of fact this can only be established before the appropriate Court in the trial and there was no case made out for quashing the order of issuing process. He further submitted that the aspect pertaining to the allegation of the pendency of a dowry harassment case was completely uncalled for and in any event had nothing to do with the petitioners discharging his public functions and therefore would not qualify as an exception under Section 499.

3. Heard the learned counsel for the parties and perused the impugned order.

The impugned order has proceeded on the basis that the specific case of the revision applicant before the Sessions Court namely the respondents herein was that the reference to the dowry harassment case in paragraph 3 quoted above, was only a passing reference. In paragraph 11 of the impugned order, there is an observation that in the reply filed by the complainant in the revision application, the complainant had admitted that there was a criminal case but it was a case under Section 498(A) of the Indian Penal Code and pertaining to alleged ill treatment meted out his wife. Accordingly, the Court found that the report was not deliberate or with the intention of defame the present petitioner. The Court therefore recorded that there was no dispute about any other part of the report, save and except, the offending paragraph quoted above.

4. The Court found that it is a case of mis-reporting. As regards involvement of the petitioner in the dowry case it was further held that the news items cannot be said to be baseless and accordingly it was of the view that the order of issuing process disclosed application of mind as is required and mandated by law has not been passed in a mechanical fashion. For the aforesaid reasons, the revision application was allowed.

5. In the course of arguments, the learned counsel for the petitioner was called upon to produce a copy of the reply filed on behalf of the petitioner in the revision application and reference to which was made in paragraph 11 of the impugned order. Copy of the reply has since been tendered

across the bar. In the reply, the petitioner has reiterated that the news report has defamed him in the eyes of the public, friends and relatives and has been published with an intention to harm or with belief that the imputation will harm and malign the present reputation of the petitioner. Being aggrieved with the order of conviction passed by the JMFC, Bhiwandi, in Criminal Case no.639/1999. Reply also annexed thereto a copy of the judgment in Criminal Appeal no.53/2003 filed by the present petitioner in the Court of the Additional Sessions Judge, Thane against the State.

6. The judgment delivered on 26th June, 2004 records in paragraph 2 that there was an allegation that the petitioner had ill treated his wife ever since his marriage suspecting her character and also for not complying with the petitioner's demand for Rs.4 lakhs for purchase of a house. It is also recorded in the said judgment that she was sent to her parental home for bringing the said amount of Rs.4 lakhs and that although this demand could not be fulfilled his father-in-law had given a cheque of Rs.1 lakh.
7. In the circumstances, the finding of the Sessions Court to the effect that there was a complaint under Section 498A and that the petitioner had admitted the same is not unfounded. The reference in the judgment clearly indicates the nature of the case that was pending and against which the criminal appeal was filed. In the circumstances, there is no reason to find fault with the impugned order especially in view of the fact that the judgment dated 26th June, 2004 (supra) indicates that indeed was a

complaint of dowry being demanded. Nothing on record indicates that the requirements of Section 499 have been met. The news report in my view neither intended to harm nor was made with reason to believe that it will harm the reputation of the petitioner.

8. In the circumstances, I am of the view that there is no case for interference and no reason for this Court to exercise its writ jurisdiction. Accordingly, I pass the following order:-

- (i) Petition is rejected.
- (ii) There will be no order as to costs.

(A. K. MENON, J.)