

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 21 OF 2005

Bhimraj s/o Anandrao Chitale,
Age: 59 years, Occu: Service,
R/o House No.53, Kavde Galli,
Nalegaon, Ahmednagar,
District: Ahmednagar. ... applicant

Versus

1. Laxman s/o Anandrao Chitale,
Age: 72 years, Occu: Pensioner,
R/o B-4, Dogra House, Tridal Nagar,
Yerwada, Pune-6.
2. The State of Maharashtra
Through P.P., High Court,
Aurangabad. ... Respondents

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Mr. S. S. Jadhavar, Advocate for the Revision applicant.
Mr. V. R. Dhorde, Advocate for Respondent No.1.
Mr. B. V. Virdhe, APP for Respondent No.2-State.

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WITH
CRIMINAL RIVISION APPLICATION NO. 22 OF 2005

Lt. Col.(Retd.) Laxman Anandrao Chitale,
Age: 72 years, Occ: Retired Lieutenant
Colonel,
R/o B-4, Dogra House, Tridal Nagar,
Yerwada, Pune-6. ... applicants
(Orig. accused)

Versus

1. Bhimraj Anandrao Chitale,
Age: 62 years, Occ: Service
in Tele-Communication Department,
R/o Nalegaon, Belhekar Wada,

Ahmednagar, Tq. & Dist. Ahmednagar.

2. The State of Maharashtra,
(Copy to be served on
Public Prosecutor, High Court
on Bombay, Bench at
Aurangabad.

... Respondents
(R.No.1 orig. complainant)

.....
Mr. V. R. Dhorde, Advocate for the Revision applicant.
Mr. S. S. Jadhavar, Advocate for Respondent No.1.
Mr. B. V. Virdhe, APP for Respondent No.2-State.

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CORAM : V. K. JADHAV, J.
DATE : 07.09.2018

JUDGMENT :-

1. These two criminal revision applications are filed by the applicants, who are real brothers, challenging the same judgment and order dated 22.12.2004 passed by the Ist Ad-hoc Additional Sessions Judge, Ahmednagar in criminal appeal no. 53 of 2003, thereby reducing the sentence, passed by Judicial Magistrate, First Class, Ahmednagar in S.T.C. No. 1726 of 1995 against the applicant Laxman, to fine only

2. Brief facts, giving rise to these criminal revision applications are as follows:

a. At the relevant time, Bhimraj s/o Anandrao Chitale (applicant in

criminal revision application no. 21 of 2005) was working in Tele-Communication Department at Ahmednagar and Laxman s/o Anandrao Chitale (applicant in criminal revision application no. 22 of 2005), a retired Lieutenant Colonel, was residing at Pune. Some proceedings were pending between these two real brothers regarding a house property at Ahmednagar. Bhimraj was residing at the said house at Ahmednagar alongwith their elder widow sister Satyabhamabai who was then 72 years old. Laxman was contesting election to the Vidhan-Sabha and in that respect he was on tour to Ahmednagar on 20.04.1995. At that time, he was informed by said sister Satyabhamabai that on 15.04.1995, Bhimraj and his wife had quarreled with her and also slapped her. Hence, Laxman made a complaint in good faith to the District Superintendent of Police mentioning the said incident and requesting protection to the elder sister. The said complaint was sent to Kotwali Police Station and was subsequently investigated and Bhimraj was prosecuted under Section 107 of the Criminal Procedure Code, 1973. Bhimraj was then directed to execute a bond of good behaviour by the the Executive Magistrate and the said order attained finality.

b. However, on 02.08.1995, Bhimraj filed a private complaint baring S.T.C. No. 1726 of 1995 before J.M.F.C., Ahmednagar under Section 499 r/w 500 of IPC, alleging therein that the letter/complaint

made by Laxman to the District Superintendent of Police, making certain allegations against Bhimraj, amounts to defamation. Bhimraj/complainant examined himself and one more witness to prove the guilt of Laxman. Laxman appeared in the said proceeding before J.M.F.C., Ahmednagar and admitted that he has written the said letter/complaint with a view to protect the life and liberty of his elder sister, who was at that time 72 years of age and in need of protection. Learned JMFC, Ahmednagar, considering the evidence on record and after hearing both sides, passed the judgment and order dated 07.07.2003 and convicted said Laxman for the offence punishable under Section 500 of I.P.C. and sentenced him to suffer simple imprisonment for three months and to pay a fine of Rs.1000/-, in default, to suffer simple imprisonment for one month.

c. Aggrieved by the said judgment and order of conviction, said Laxman preferred criminal appeal no. 53 of 2003 before the Sessions Court, Ahmednagar. The appellate court, by judgment and order dated 22.12.2004, maintained the order of conviction, however, modified the sentence reducing it to pay fine of Rs.1000/- only, and in default, to suffer simple imprisonment for one month. The sentence of simple imprisonment of three months passed by the trial court has thus been set aside by the appellate court.

d. Thus, Bhimraj has challenged the said judgment and order of the appellate court to the extent of reduction of sentence, by filing criminal revision application no. 21 of 2005 and said Laxman has filed criminal revision application no. 22 of 2005 challenging the same judgment and order to the extent of imposition of fine.

3. Learned counsel appearing for the applicant in criminal revision application no. 21 of 2005 (Bhimraj) submits that respondent/Laxman sent a letter to the District Superintendent of Police, the District Collector and the Telecom District Manager, Ahmednagar. In the said letter dated 20.04.1995, it was alleged that the applicant/Bhimraj is a "*gunda*" and he assists the people of certain community for committing theft and other offences. Learned counsel submits that on 28.07.1995, when the applicant/Bhimraj was about to go to office, a Police Constable came to his house to call him at Kotwali Police Station. At that time, friends of the son of applicant/Bhimraj were present in the house. After hearing the allegations against the applicant/Bhimraj, the friends of his son started suspecting him. Thus, the applicant/Bhimraj was defamed by respondent/Laxman. Learned counsel further submits that respondent/Laxman has admitted the publication of defamatory letter and its circulation and the applicant/Bhimraj has proved the guilt of respondent/Laxman. The punishment provided for the offence

punishable under Section 500 is up to two years and the learned trial court has already taken a lenient view and sentenced the respondent/Laxman for three months' simple imprisonment and fine of Rs.1000/-. In this eventuality, the order of appellate court reducing the sentence to fine only, is illegal and bad in law. Learned counsel submits that respondent/Laxman has committed the said act deliberately with a *malafide* intention. However, the appellate court has taken a lenient view against him only because he is a retired military officer and thus committed error in reducing the sentence.

4. Learned counsel for the applicant in criminal revision application no. 21 of 2005, in order to substantiate his contentions, placed reliance of the following two cases:

1. ***Bandopant Satyappa Sangle vs Raghunath Ramchandra Bide & Another***, reported in **1980 Bom.C.R. 567** and
2. ***Damodara Shenoï vs Public Prosecutor Ernakulam***, reported in **1989 Cri.L.J. 2398**.

5. Learned counsel for the applicant in criminal revision application no. 22 of 2005 (Laxman) submits that the applicant/Laxman was contesting the elections to the State Legislative Assembly and for that purpose he had visited

Ahmednagar on 20.04.1995. On that day, the respondent/Bhimraj had seen the applicant/Laxman at the bus-stop and had abused him. On the same day, he also found his elder sister Satyabhamabai weeping and crying. She was in a shock state of mind. She informed the applicant/Laxman that on 15.04.1995, the respondent/Bhimraj and his wife had beaten her. The respondent/Bhimraj was unnecessarily creating trouble to the family members. Therefore, the applicant/Laxman wrote a letter to the District Superintendent of Police complaining about the above acts of respondent/Bhimraj and requesting for protection to the elder sister Satyabhamabai, who was then 72 years of age. The applicant/Laxman had also mentioned in the letter about the activities of the respondent/Bhimraj and his three sons. Learned counsel submits that, the applicant/Laxman had made the said complaint in good faith seeking protection to his sister as he is the eldest member in his family. The respondent/Bhimraj had been harassing her. On 15.04.1995, the respondent/Bhimraj and his wife had also slapped her. Learned counsel submits that, in such backdrop, being the eldest member of the family, the act of the applicant/Laxman in sending letter to D.S.P. seeking protection to his old aged sister does not amount to defamation. Learned counsel submits that, in total disregard to the evidence the learned J.M.F.C. has convicted the applicant - Laxman under Section 500 of IPC and sentenced him, as aforesaid. Both the courts below have misread

and misconstrued the complaint dated 20.04.1995 sent by applicant/Laxman and erroneously held that the complaint itself discloses commission of offence punishable under Section 499 r/w 500 of IPC. The courts below have erroneously held that in pursuance of the said complaint, the Kotwali Police Station had made inquiry and in the said inquiry, a police constable had asked certain questions to the respondent/Bhimraj in presence of his son's friends and therefore, the same amounts to defamation. In fact, no witness was examined by the respondent/Bhimraj to prove the incident which is alleged to have occurred in his house in presence of friends of his son. In absence of any such evidence, there cannot be a case of defamation. Learned counsel further submits that respondent/Bhimraj had filed complaint S.T.C. No. 1726 of 1995 with a view to see that the applicant/Laxman should not claim share in the joint family property. Thus, the said complaint filed by respondent/Bhimraj is false and malicious. Learned counsel submits that the said complaint S.T.C. No. 1726 of 1995 was filed on 02.08.1995 and the process was issued on 28.01.2000 almost after a period of five years. Thus, as per the ratio laid down by the Supreme Court, the complaint itself is time barred.

6. I have also heard learned APP appearing for the respondent No.2-State in both the criminal revision applications.

7. Learned counsel for the applicant in criminal revision application No. 21 of 2005 has vehemently submitted that imputation complained of is *per se* defamatory and the respondent-original accused has failed to prove that he has made these imputations on good faith. It is well settled that in order to claim good faith in prosecution for defamation accused must show that before making the alleged imputation he had made enquiry with due care and attention and that he was satisfied about the truth of that imputation. The emphasis is on enquiry, care and objective satisfaction. In the instant case, the accused has not discharged the burden that lay upon him for bringing the case within the exceptions by merely saying that he acted on the information given by certain persons. The law requires that it is his duty to make enquiry about the truth of the imputations and to satisfy himself that the imputations are true. Learned counsel for the applicant has rightly placed his reliance on the judgment of this Court in the case of ***Bandopant Satyappa Sangle Vs. Raghunath Ramchandra Bide and another (supra)***, wherein this court has made the aforesaid observations. Further in the case of ***Damodara Shenoi vs. Public prosecutor Ernakulam (supra)*** the Kerala High Court has taken similar view.

8. In the instant case, the learned J.M.F.C. Court No.3,

Ahmednagar has convicted the respondent-accused for the offence punishable under Section 500 of I.P.C. and directed him to suffer simple imprisonment for three months and to pay a fine amount of Rs.1000/- i/d of payment of fine, to suffer simple imprisonment for one month. Learned Ad-hoc Additional Sessions Judge, Ahmednagar in para 22 of the judgment has observed that leniency can be shown in respect of the punishment imposed upon the accused, looking to his age and other antecedents. It would be appropriate to mention here the age of the original accused, which was 70 years, when he has preferred appeal in the year 2003 before the Sessions Court, Ahmednagar. In the circumstances, the learned Additional Sessions Judge has reduced the punishment to the extent of fine only.

9. By preferring criminal revision application No. 22 of 2005, the respondents-original accused Laxman has also challenged the imposition of fine. It is necessary to mention here that the applicant-original complainant and the respondent-original accused are real brothers interse. The imputations in the letter sent to the Superintendent of Police, Ahmednagar by accused Laxman are per se defamatory. The accused Laxman has failed to discharge the burden that lay upon him. In the case of defamation in order to attract protection of exception 8 to Section 499 of I.P.C. the accused

must prove that he had acted in good faith and that he made due enquiries before he published the imputation. In the instant case, the accused Laxman has made reckless statement against his real brother and even accused Laxman failed to prove by preponderance of probability that while making such statement in the letter sent to the Superintendent of Police, Ahmednagar he has made such statement in good faith.

10. In view of the above, I do not find any substance in both the criminal revision applications. Considering the age and the relations between the parties, the learned Additional Sessions has rightly shown leniency and reduced the sentence to the extent of fine only and as such, I do not find any substance in the criminal revision application No. 21 of 2005 preferred by the applicant-original complainant. So also there is no substance in the revision preferred by accused Laxman as against imposition of fine by the learned Additional Sessions Judge. In the result, both the criminal revision applications are liable to be dismissed. Hence, the following order:-

ORDER

Both the Criminal Revision Applications are hereby dismissed.

Rule stands discharged.

(V. K. JADHAV, J.)

rlj/

Rangnath
Laxmanrao
Jadhav

Digitally signed by
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