

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1195 OF 2016

Prasenjeet Naval Baisane,
Age : 39 years, Occu. Advocate,
R/o Flat No.401, Siddheshwar Apartment,
Lumbini Van Parisar, Sakri Road,
Dhule, Tq. & Dist. Dhule

PETITIONER

VERSUS

Umesh Limba Bhamare,
Age : Major, Occu. Service,
R/o 11, N.S. Patil Housing Society,
Deopur, Dhule

RESPONDENT
(Orig. Complainant)

Mr. Afzal Husain M. Vakil, Advocate for the petitioner
Mr. P.M. Gaikwad, Advocate holding for Mr. G.K.
Muneshwar, Advocate for the respondent

CORAM : SANGITRAO S. PATIL, J.

DATE : 13th JULY, 2018

ORAL JUDGMENT :

Rule, made returnable forthwith. With the consent of the learned counsel for the parties, heard finally.

2. The petitioner has challenged the judgment and order dated 1st August, 2016, passed by the learned Additional Sessions Judge, Dhule in Criminal Revision No.97 of 2015, whereby he confirmed the order

dated 17th August, 2015, passed in S.T.C. No.1348 of 2015 by the learned Judicial Magistrate, First Class, Dhule, issuing process against the petitioner for the offence punishable under Section 500 of the Indian Penal Code ("IPC", for short).

3. The petitioner is a practising Advocate at Dhule. He issued a notice dated 27th May, 2015, on instructions of his client namely Appa Gorakh Bhamare, to the father of the respondent, claiming damages of Rs.5,00,000/-. It is alleged by the respondent that though he did not contact the petitioner at any point of time, the petitioner published a false news item in Daily Lokmat and Punya Nagari, dated 2nd June, 2015, alleging that the respondent got enraged because the petitioner addressed the above mentioned notice to his father and therefore, the respondent threatened him to beat. According to the respondent, it was totally false statement published by the petitioner in the newspapers. Due to that, his reputation has been lowered down in the society. He has been defamed. Therefore, he filed complaint for the offence under Section 499 punishable under Section 500 of the IPC in the Court of Judicial Magistrate, First Class, Dhule on 13th July, 2015.

4. The learned Judicial Magistrate, First Class recorded the statement of the respondent and after considering the above referred news items, published in Daily Lokmat and Punya Nagari, came to hold that there are sufficient grounds to proceed against the petitioner and issued process against the petitioner for the offence punishable under Section 500 of the IPC.

5. The petitioner challenged the order passed by the learned Judicial Magistrate, First Class by filing Criminal Revision No.97 of 2015. However, the learned Additional Sessions Judge dismissed the said Revision Petition and confirmed the order passed by the learned Magistrate.

6. The learned counsel for the respondent submits that the petitioner is a practising lawyer. As a part of his profession, he issued notice on the instructions of his client to the father of the respondent. The respondent got annoyed and threatened the petitioner of beating. Therefore, the petitioner reported that fact to the office bearers of the Advocates' Bar. The President and the other members of the Bar sent a letter to the Superintendent of Police, Dhule to take necessary

action against the respondent for threatening the petitioner. The said fact was published in the newspaper. The petitioner has no concern whatsoever with the said publication. However, the respondent falsely filed complaint against the petitioner for defamation. He submits that the learned Judicial Magistrate did not consider the facts of the case properly and wrongly issued the process against the petitioner. He submits that the learned Additional Sessions judge also did not appreciate the facts of the case correctly and properly and wrongly confirmed the order passed by the learned Magistrate. He, therefore, prays that the impugned orders may be quashed and set aside.

7. The learned counsel for the respondent strongly opposed the petition. He submits that because of publication of the false news in Daily Newspapers, referred to above, the respondent has been defamed. His reputation has been lowered down in the society. He is a Lecturer serving at Nashik. He submits that the learned Judicial Magistrate, First Class and the learned Additional Sessions Judge have rightly considered the facts of the case and rightly held that there are

sufficient grounds to proceed against the petitioner. He supports the impugned orders and prays that the Writ Petition may be dismissed.

8. It is the case of the respondent that the petitioner published the news items in Daily Lokmat and Punya Nagari, which were defamatory. The copies of these news items are produced with the papers of this Writ Petition. There is nothing in the said news items to show that they were published by the petitioner. The source of the said news items has not at all been disclosed. It was, therefore, necessary for the respondent to issue prior notice to the Publisher and Editor of the newspapers concerned to get it confirmed as to who had actually got published the said news items. No such attempt has been made by the respondent. The Editor, Printer and Publisher of the newspapers are not added as accused persons. In the circumstances, prima facie, the petitioner cannot be said to be the person who got the said news items published.

9. The petitioner has filed a copy of the Non-Cognizable case bearing No.275 of 2015, registered on 30th May, 2015 against the respondent on the report that was lodged by the petitioner for the offence punishable

under Section 507 of the IPC, on the allegations that since he issued notice against the father of the respondent, the respondent threatened him of death. This Non-Cognizable case, prima facie, supports the version of the petitioner that the respondent had threatened him because he had issued notice against the father of the respondent.

10. As stated above, there is no prima facie evidence to show that the news items were published either by the petitioner or at his instance. Therefore, he cannot be connected with the act of publication of the said news items. If that be so, the petitioner cannot be connected with the offence under Section 499 punishable under Section 500 of the IPC.

11. The learned Judicial Magistrate did not at all consider this vital aspect of the matter and wrongly issued process against the petitioner. The learned Judge of the Revisional Court also did not consider the source of information given to the Publishers of the newspapers in respect of the alleged defamatory news items and without there being anything to show that it was the petitioner only who got those news items published, wrongly held that there are sufficient grounds to

proceed against the petitioner.

12. The learned counsel for the respondent cited the judgments in the cases of ***Ram Swarup Vs. Mohd. Javed Razack (2005) 10 SCC 383 and Rajdeep Sardesai Vs. State of Andhra Pradesh and others (2015) 8 SCC 239***, in support of his contention that the process has rightly been issued against the petitioner. The facts of the said cases were totally different, in the sense that there was sufficient material on record to connect the accused therein with the defamatory statements. In the present case, as stated above, there is absolutely nothing to show that it is the petitioner only who got the news items published in the newspapers. Therefore, the above-cited rulings would not be of any help to the respondents.

13. The impugned orders are not legal, proper and correct. They are not at all sustainable. There are no sufficient grounds to proceed against the petitioner for the offence under Section 499 punishable under Section 500 of the IPC. The impugned orders are liable to be quashed and set aside. In the result, I pass the following order:-

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned order passed by the learned Judicial Magistrate, First Class, Dhule, issuing process against the petitioner for the offence punishable under Section 500 of the IPC and the impugned judgment and order passed by the learned Additional Sessions Judge, Dhule, confirming the order passed by the learned Judicial Magistrate, First Class, are quashed and set aside.
- (iii) The proceedings against the petitioner are closed.
- (iv) Rule is made absolute in the above terms.
- (v) The Writ Petition is disposed of accordingly.

[SANGITRAO S. PATIL]
JUDGE