

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.

Criminal Application No. 05977 of 2017

District : Ahmednagar

Sudhir Anandrao Lanke,
Age : 39 years,
Occupation Service,
R/o. Lokmat Bhawan,
Manmad Road,
Ahmednagar.

.. Applicant.

versus

1. Shri Jagdamba Public Trust,
Mohata, Taluka Pathardi,
District Ahmednagar,
Through Prasanna Sahebrao
Darade,
Age : 47 years,
Occupation : Lawyer,
R/o. 21, Madhukunj,
Pashan Road,
Near Bhuvneshwar Society,
Aaundh, Pune.
2. The State of Maharashtra.

.. Non-applicants.

.....

Mr. Satyajit S. Bora, Advocate, for the applicant.

*Mr. Rajendra S. Deshmukh, Advocate, for
non-applicant no.01.*

*Mr. S.P. Sonpawale, Additional Public Prosecutor,
for non-applicant no.02.*

.....

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 25TH JULY 2018

JUDGMENT :

01. Present application has been filed by original accused no.02 by invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973, to quash and set aside the order dated 03.03.2017, passed by the Judicial Magistrate (F.C.), Ahmednagar, whereby the order of issue process against the present applicant for the offence punishable under Sections 500, 501, 502, read with Sections 34 and 120B of the Indian Penal Code came to be passed in S.C.C. No. 554 of 2017 on complaint dated 25.01.2017 lodged by respondent no.01 - complainant. The applicant is also challenging the order passed by the learned Additional Sessions Judge, Ahmednagar, in Criminal Revision No. 124 of 2017, dated 13.09.2017, confirming the order of the learned Magistrate by dismissing the revision petition.

02. The applicant contends that he is serving as head of Ahmednagar edition of daily Lokmat which is widely circulated through the Maharashtra. As a journalist, it was his duty to bring to the notice of public at large, the things which are going on in public trust without taking anybody's side. He

submits, that it is always the job of journalist to criticize functioning of public officers so that they work within the framework of the Constitution as well as various laws. He has freedom of speech as well as expression which is the right guaranteed under Article 19 of the Constitution of India. He has written news articles from 06.01.2017 to 19.01.2017 under the heading '*Mohatyachi Maya*'. The sole purpose of the series was to bring public at large, various irregularities which are being committed by the trustees of the public trust. The article dated 06.01.2017 mainly highlighted that at the time of renovation of Mohata Devi Temple, some *Suvarna Yantras* were buried and to make *Sanskar* on the said *Suvarna Yantras*, *Gorochan* was used which is available in the gall bladder of the cow. A question was put to the public at large, as to from where such *Gorochan* is made available when there is ban on cow slaughter. It was the purpose of the news article, as to how for the purpose of burying said *Suvarna Yantras*, huge amount is spent. In the news article dated 07.01.2017, it was reported that there was huge difference in the account in respect of gold and silver of the trust. There was no intention to defame the trust but a query was put which was, in fact, query which was raised by some of the trustees. Whatever reporting has been made is in good faith. Thereafter, in the news article dated 09.01.2017, it was stated that though the

District Judge is the Chairman, still there is no transparency in the working of the trust and as such, faith of the public at large that, when there is a Judicial Officer, there will be transparency is shattered. The intention behind this article was also not to defame either the trust or trustees, but it was only to bring out the fact that there is no transparency though Judicial Officer is one of the officer of the trust. After completion of the series of the news articles, there was certain agitation by the villagers against the trust and, therefore, public felt that the trustees have cheated them. Thereafter, the respondent lodged a private complaint dated 25.01.2017 for the aforesaid offences against, in all, seven accused persons which included, ex-trustee, present applicant and other officers of Lokmat Media Private Limited.

03. After receipt of the summons, the applicant had approached Sessions Court in Criminal Revision No. 124 of 2017, thereby raising several grounds stating that no offence is made out. However, his revision has been dismissed. The applicant contends that when there was no intention to defame anybody, it cannot be said that offence of any kind has been made out. The essence of offence of defamation is to harm the reputation of a person. Here, questions were raised in respect

of work of a trust which is carried out through its trustees. It is tried to be contended by the applicant, that the case and his articles come within Explanation 4 and 9th as well as 10th explanation to Section 499 of the Indian Penal Code. It has been contended that both the courts below did not consider that there was no prima facie case made out for issuance of process. There was no due application of mind by the learned Magistrate while passing the impugned order of issuance of process. It would be an abuse of process of law to ask him to face the trial and, therefore, he has prayed for setting aside the order of issuance of process by the learned Magistrate as well as setting aside the order passed by the learned Additional Sessions Judge, Ahmednagar, in dismissing his revision application.

04. Affidavit in reply contesting the application has been filed by respondent no.01. It has been stated that the application is not maintainable since there is no prayer for quashing of the proceedings but it is only challenging the orders. He has given who are the ex-officio trustees of the trust. It is also stated that Mohta Devi temple is very famous temple throughout the State of Maharashtra and also adjoining states. Lacs of devotees visit the temple for worshipping the goddess and give donations in terms of money as

well as other articles. The administration of the trustees is fully transparent and entire donations are noted down in the official record of the trust. The trust is also running a school at village Mohate wherein free education is given to the students. The trust also undertakes many welfare activities, such as, Mahaprasad, group marriages, tree plantation, etc. There is absolutely no mismanagement or misappropriation of the funds of the trust. The accounts of the trust are regularly audited by authorized auditor. It is stated that right from the beginning, behaviour of one of the former trustees, namely, Namdeo Garad, who was trustee between 2013 to 2016, was not proper. He used to infringe the rules and used to attempt to pressurize the officers of the Chairman, C.E.O. and other trustees. He has also made false complaints before this Court and other authorities, of which, no cognizance was taken. Therefore, he had hatched up conspiracy with daily Lokmat and the persons working in the said newspaper with an intention to defame the trust by publishing false defamatory articles. After passing a resolution on 11.01.2017 by the trust, he had lodged complaint on behalf of the trust before the learned Chief Judicial Magistrate, Ahmednagar, against seven persons, including the applicant. It was clarified therein, as to how the articles are defamatory. Taking into consideration the evidence on record and contents,

the learned Judicial Magistrate (F.C.), Court No.08, Ahmednagar, by order dated 03.03.2017 had issued process under Section 500 read with Section 34 and Section 120-B of the IPC against accused nos.01 to 07 and under Sections 501, 502, read with Section 34 of the Indian Penal against accused nos.02 to 07. The applicant had preferred the revision and the learned Additional Sessions Judge by a detail order, has rejected the same. The reasons are correctly arrived at. There was a limited scope under Section 397 of the Cr.P.C. to challenge the order of issuance of process. The applicant has already exhausted that remedy and, therefore, present application is liable to be rejected.

05. Heard learned Advocate appearing for the applicant. Heard learned Advocate appearing for non-applicant no.01 and heard the learned Additional Public Prosecutor appearing for non-applicant no.02 - State of Maharashtra.

06. All those articles which are alleged to be defamatory, photo-copies of those articles have been produced on record. The contents of the complaint would show that the complainant himself is a trustee of Shri Jagdamba Devi Trust, Mohata Devsthan, Taluka Pathardi, District Ahmednagar. He has given the history of the trust and how

decisions are taken by the trust. He has submitted that because of news articles, the faith of the general public has shaken. The language used in the articles was defamatory questioning the modalities adopted by the trust in the working. When, in fact, District Judge is President of the trust, it has its own transparency, but even question mark is raised on judiciary and, therefore, he had contended that the action should be taken against the accused persons.

07. It will not be out of place to mention here that, while arguing, both the learned Advocates representing the applicant as well as respondent no.01, has taken me through the articles and submitted that how it is not defamatory and how it is defamatory, respectively. Learned Advocate appearing for the applicant has relied on the decision in *Bennett Coleman & Co. Ltd. & others Vs. K. Sarat Chandra & others* [MANU/AP/1026/2015]. It is a decision by the High Court at Hyderabad for the States of Telangana and Andhra Pradesh, wherein it has been held that, *the person alleging in good faith must establish the fact that before making any allegations he had made enquiry. The reasons and facts given by him must indicate that he had acted with due care and attention and that he was satisfied about truth of allegations. To escape charge of defamation, one must show that there was no malice on his part.* The basis for his reliance on this judgment was that the present

applicant had taken all precautions and due care, made enquiry and then he had published those articles. In order to support his statement, he has produced on record, photo-copy of information about the Suvarna Yantra given by one O.S.A. Architect, Pune, so also, the note of the trust which the applicant had obtained.

08. The applicant has also relied on the decision in *Dinkar Keshavrao Raikar & another Vs. Mirza Afzal Baig s/o. Mirza Anvar Baig*, Criminal Application No. 607 of 2006, decided by this Court on 09.11.2017. The applicants therein were the editors and representatives of daily Lokmat. By taking note of various decisions, the order of issuance of process for offence punishable under Sections 500 and 501 of the IPC against the applicants therein, so also proceedings before the Magistrate as well as decision in revision application were quashed and set aside.

09. The applicant has also relied on the decision of this Court at Nagpur Bench, in *Harish s/o. Rameshrao Ukey & 07 others Vs. Sau. Kiranlata w/o. Harish Ukey*, Criminal Application (APL) No. 257 of 2016, dated 20th July 2016, wherein taking into consideration the fact that certain accused were residing outside the jurisdiction of the Magistrate, the order was set aside and the matter was remanded back to the

Magistrate for considering it afresh in accordance with law.

10. Per contra, learned Advocate appearing for respondent no.01, in support of his arguments, relied on the decision of this Court in *Bhiku Yeshwant Dhangat & others Vs. Baban Maruti Barate & another* [2001 Bom.C.R. (Cri.) 69], wherein the point that the challenge to the issue process was on the ground of absence of list of witnesses and documents in support of the complaint. It was held that it would be sufficient if complaint incorporates names of witnesses instead of giving a separate list. He submitted that though separate list is not given, sufficient compliance has been made. He also submitted that the language used in the article is defamatory and it is clearly at the instance of accused no.01.

11. When basic point is challenged, that since certain accused persons in the complaint were residents of outside the jurisdiction of the learned Magistrate, the law required that the learned Magistrate ought to have postponed the issuance of process and then ought to have undergone further procedure required under the law has not been adhered to in this case. I would refrain myself from making any comments on the merits of the case. In other words, if there is no basic compliance before issuance of process by the

learned Magistrate, it will not be appropriate to go into the aspect as to whether the contents of the disputed articles were attracting the ingredients of the offence punishable under Sections 500, read with Sections 34 and 120B and Sections 501, 502, read with Sections 34 and 120B of the IPC.

12. As aforesaid, in the case of *Harish s/o. Rameshrao Ukey (supra)*, wherein the body of the complaint showed that the complainant had admitted that all the proposed accused were residing at places falling outside the territorial jurisdiction of the Court of Judicial Magistrate, Akola and the mandate of Section 202 of the Cr.P.C. would require that the learned Magistrate to postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a police officer or some other fit person in order to decide as to whether or not, there is sufficient ground for proceeding further, has been upheld. Reliance was placed on the decision in *Udai Shankar Awasthi vs. State of Uttar Pradesh & another [(2013) 2 SCC 435]* as well as *National Bank of Oman vs. Barakara Abdul Aziz & another [(2013) 2 SCC 488]*. In *Udai Shankar Awasthi's case (supra)*, the Hon'ble Apex Court has held that it is obligatory for the Magistrate to follow the procedure laid down in Section 202 of the Cr.P.C. Same ratio has been laid down in *National Bank of Oman's case (supra)*.

In both these cases, accused persons were residing beyond the area falling in the jurisdiction of the concerned court. It is necessary to reproduce paras 07 and 08 from *Harish s/o. Rameshrao Ukey's case (supra)*, which read as under :-

"7. Before the judgment in the case of Udai Shankar Awasthi (supra) was rendered, Hon'ble Apex Court in the case of National Bank of Oman (supra) had propounded the same law. In that case, Aurangabad Bench of this Court had taken a view that since the accused was residing in an area falling beyond the jurisdiction of the Chief Judicial Magistrate, Ahmednagar, it was necessary for the learned Magistrate to carry out an enquiry or order investigation as contemplated under Section 202 of the Criminal Procedure Code before issuing the process. The view so taken by this Court was found to be correct by the Hon'ble Supreme Court, when it observed in paragraph 8 that it was incumbent upon the learned Magistrate to carry out an enquiry or order investigation as contemplated under Section 202 of the Criminal Procedure Code before issuing the process. The Hon'ble Apex Court also delineated the scope of enquiry under Section 202 of the Criminal Procedure Code by observing that it is limited to the ascertainment of truth or otherwise of the allegations made in the complaint. The observations of the Hon'ble Supreme Court made in this regard appear in paragraphs 8 and 9 of the Judgment and they are reproduced as below :

"8. We find no error in the view taken by the High Court that the CJM Ahmednagar had not carried out any enquiry or ordered investigation as

contemplated under Section 202 Cr.P.C. before issuing the process, considering the fact that the respondent is a resident of District Dakshin Kannada, which does not fall within the jurisdiction of the C.J.M., Ahmednagar. It was, therefore, incumbent upon him to carry out an enquiry or order investigation as contemplated under Section 202 Cr.P.C. before issuing the process.

9. The duty of a Magistrate receiving a complaint is set out in Section 202 Cr.P.C. and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 Cr.P.C. is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint.

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. "

8. So, it is clear that the newly amended Section 202 of Criminal Procedure Code makes it obligatory for the Criminal Court empowered to take cognizance of the complaint to postpone the issue of process in a case where the accused resides at a place falling beyond the territorial jurisdiction of that Court to order an enquiry or direct an investigation as contemplated in the said Section. The Hon'ble Apex Court in the case of National Bank of Oman (*supra*) has also directed (paragraph 12) that the High Court, instead of quashing the complaint in such a case, should remit the matter to the concerned Magistrate for passing an order afresh in accordance with law. It would thus follow that with such a direction, it would be necessary for this Court to quash the impugned order and remand the matter back to the learned Magistrate for its being considered afresh in accordance with law. "

13. Here, in this case, the proposed accused nos.03 to 07 are shown to be residents / work place at M.I.D.C., Shendra, Aurangabad. Even accused no.01 is shown to be resident of Amrapur, Taluka Shevgaon, which is not within the jurisdiction of Judicial Magistrate (F.C.), Court No.08, Ahmednagar, who has passed the order of issuance of process. The record does not show that he has either conducted the enquiry himself as contemplated under Section 202 of the Cr.P.C. or

directed it to be held through the police officer. Learned Advocate appearing for respondent no.01 has fairly submitted that, according to him also, such course is not taken up by the learned Magistrate.

14. It is to be noted that while deciding the criminal revision by the learned Additional Sessions Judge, this point was not raised nor it was noted by the learned Additional Sessions Judge, Ahmednagar. Since this is a law point and it goes to the root in respect of the procedure to be adopted, it can be raised at any point of time and even before this Court under Section 482 of the Cr.P.C. Merely because the applicant had exhausted his remedy under Section 397 of the Cr.P.C., that does not mean that he cannot come to this Court by invoking inherent powers of this Court under Section 482 of the Cr.P.C. and point out the inherent defect in the order of issuance of process by the learned Magistrate as well as which was not taken care by the learned Additional Sessions Judge under Section 397 of the Cr.P.C.

15. At the cost of repetition, I would like to say that since it has been decided to remand the matter back to the Magistrate by setting aside the order of issuance of process as well as by setting aside the order in revision, so that the Magistrate would comply with the provisions, this Court is not

expressing anything on the merits of the case.

16. In the result, the application is hereby partly allowed.

(a) The order passed by the Additional Sessions Judge, Ahmednagar, in Criminal Revision No. 124 of 2017, on 13.09.2017, is hereby set aside.

(b) The order of issuance of process passed by the Judicial Magistrate (F.C.), Court No.8, Ahmednagar, on 03.03.2017, in S.C.C. No. 554 of 2017, directing issuance of process against original accused nos.01 to 07, under Section 500, read with Section 34, and Section 120B of the Indian Penal Code and also, against original accused nos.02 to 07, under Section 501, 502, read with Section 34, and Section 120B of the Indian Penal Code, is hereby set aside.

(c) The learned Magistrate before whom, S.C.C. No. 554 of 2017 is pending, is directed to comply with the mandatory requirement of Section 202 of the Code of Criminal Procedure, 1973, taking into consideration the fact that original accused nos.03 to 07 are residents of Aurangabad, which is not within the jurisdiction of the learned Magistrate.

(Smt. Vibha Kankanwadi)
JUDGE

.....

puranik / CRIAPPLN5977.17

**Bhagwan
Govindrao
Puranik**

Digitally signed by
Bhagwan Govindrao
Puranik
Date: 2018.09.27
16:13:49 +0530