

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

CRIMINAL REVISION APPLICATION NO. 166 OF 2017

Dilip Annappa Patil

... Applicant

Vs.

Shriram Jaysingrao Pawar & Ors

... Respondents

...

Dr. Nilesh Pawaskar a/w Ms. Geetanjali Shinde I/b Ms. Sangita Pawaskar for the applicant.

Mr. V.P. Sawant I/by Mr. P.M.Jadhav for Respondent No.1 and 2.

Mr. S.R. Shinde, APP for the Respondent-State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 13th AUGUST, 2018.

P.C.

1. This revision application has been preferred by the applicant/complainant challenging the order dated 17th January, 2017 passed by the Special Judge and Additional Sessions Judge-2, Sangli allowing the revision application and setting aside the order of process.

2. The brief facts which are relevant for quashing the application are as follows :-

(a) On 6th October, 2015, the father of the complainant died due to cardiac attack at his home in Lingnoor. Final rites were performed in the presence of family members and relatives. On 8th

October, 2015 news item appeared in daily news paper Sakal wherein it was stated that one old farmer died suspiciously on 6th October, 2015 at village Lingnoor, Taluka Miraj and that the police have commenced the investigation. It was further mentioned that family members performed the funeral without giving intimation to the police. It was also mentioned that deceased had two wives and sons and since last few days he was in dire conditions and nobody was looking after him. He was kept under starvation. He had informed the people that he would commit suicide subsequently he was found dead.

(b) As per the description given in the news article about the time, date, place as well as cause of death it was relating to the father of the complainant and an impression was carried in the minds of the people residing in the village on account of the news that complainant's father was being ill-treated by the complainant and his family.

(c) The contents of the article were defamatory in nature which created the disturbance in the family and the entire family of the complainant was ridiculed by relatives and villagers.

(d) The complainant sought death certificate of his father from village Gram Panchayat reflecting that he had expired on 6th

October, 2015 at village Lingnoor. The brother of the complainant visited the office of daily news paper Sakal and sought clarification about the defamatory news article dated 8th October, 2015 and he was ridiculed and thrown out by the staff. The complainant sent personal notice dated 28th October, 2015 to the Chief Editor, Printer & Publisher of daily newspaper Sakal, however, there was no response.

(e) The complainant sought information under Right to Information Act from the police station and verified if any complaint is received on account of suspicious death of the father of the complainant and wherein investigation in that regard is being carried out. The reply was forwarded by Right to Information Officer stating that no such complaint is recorded at the said police station qua the death of the complainant's father.

(f) After satisfying about the falsity of the news article, the complainant forwarded legal notice through his advocate and demanded the apology as well as compensation from the editor, printer, publisher, Managing Director. The same was received by accused No.1 on 8th January, 2016, however, there was no response from him. On 19th January, 2016, the Gram Panchayat Village Development Officer issued certificate that complainant's

father died on 6th October, 2016 as per the record and no death is registered within two days before the death of the father of complainant or thereafter. On the basis of aforesaid facts, the complainant filed a private complaint before the learned Judicial Magistrate First Class at Miraj being Summary Criminal Case No. 393 of 2016 on 24th April, 2016.

3. Learned Judicial Magistrate First Class, Miraj after recording the verification statement issued the process for an offence punishable under Section 500 of Indian Penal Code. The order of process was challenged by the Respondent No.1 and 2 before the Court of Sessions at Sangli vide Criminal Revision Application No. 116 of 2016. The said revision application was opposed by the complainant by filing say. Learned Special Judge and Additional Sessions Judge, Sangli by order dated 17th January, 2017 allowed the said application and set aside the order of process issued by the trial Court against the respondent No.1 and 2 for the offence punishable under Section 500 of Indian Penal Code.

4. The complainant is aggrieved by the said order passed by the the Sessions Court in exercise of revisional jurisdiction.

5. Learned counsel for the applicant submitted that Sessions Court has committed an error in setting aside the order of process.

Learned Magistrate has proceeded to issues process on the basis of averments made in the complaint, verification statement and the documents annexed to the complaint which makes out *prima-facie* case to do so. It is submitted that the Sessions Court has traveled beyond the scope of revisional powers and had appreciated the contentions of the accused which ought to have been appreciated at the time of trial. It is submitted that the news article published by the Respondent No.1 and 2 in the newspaper Sakal are false and defamatory which is apparent from various documents annexed to the complaint. News item indicate that deceased was subjected to ill-treatment and he died in suspicious of circumstances, as a result of which the impression was created in the minds of the relatives and people residing in the area that the complainant and other family members have committed acts as stated news article which has damaged the reputation of the complainant and his family members and thereby accused had committed an offence of defamation. It is further submitted that the information obtained from the police station vide RTI inquiry, the certificate issued by the Gram Panchayat clearly falsified the contents of news article published in the said news paper on 8th October, 2016. It is submitted that there was clear similarity

between the description of the deceased and the description of the person referred in news article who stated to have died in village Lingnoor where the complainant and his family including his father (deceased) was residing. It is submitted that the contents of the news articles were relating to death of complainant's father which occurred on 6th October, 2015 and news item appeared thereafter on 8th October, 2015. It is submitted that the Respondent No.1 and 2 were Chief Editor, Publisher, Printer, Managing Director respectively who were responsible for publication of news item. It is submitted that in accordance with presumption under Section 7 of the Press and Registration of Books Act (1867), the accused were responsible and an opportunity to rebut the said presumption could be exercised only at the time of trial.

6. On the other hand learned counsel for the Respondent Nos. 1 and 2 submitted that the complainant is drawing an inference relating to the news article published in the newspaper about death of his father. News item was printed from known source and the said news was published in various other news paper, however, the complainant has proceeded to file complaint only against the news paper 'Sakal'. It is further submitted that the

news item does not specify the name of the deceased and therefore only on the basis of surmises, the complaint ought not to have been entertained by the trial Court. The complaint does not specify any overt act to the Respondents being responsible for defamation of the disputed article. It is further submitted that news article makes reference to the deceased having two wives however, the complainant nowhere stated that the father of the complainant had two wives and thus no relation can be drawn in respect to the character mentioned in the news item. It is further submitted that the trial Court had issued process on the basis of vague allegations. Unless, it was specifically averred that the Respondent Nos. 1 and 2 are responsible for selecting and publishing the said Article, the Court ought not to have issued process against the accused. It is further submitted that while allowing the revision application, the Sessions Court has assigned the reasons and set aside the order of process which does not require any interference. It is submitted that on the complaint do not make out offence of defamation against the Respondent No.1 and 2. The trial Court had issued the process mechanically without application of the mind. There is nothing to relate the article published in the news paper with the death of the father of

the complainant. The learned counsel for the Respondents relied upon the decision of the Supreme Court in the case of *K.M. Mathew Vs. State of Kerala and another*¹, another decision of Hon'ble Supreme Court in the case of *K.M. Mathew Vs. K.A. Abraham*², as well as decision of this Court in the *Vivek Goenka Vs. State of Maharashtra and another*³.

7. Having heard both the sides and after going through the documents on record, it is seen that the father of the complainant had expired on 6th October, 2015 at village Lingnoor. The news items had appeared in daily news paper Sakal on 8th October, 2015. On perusal of the news item which was the subject matter of the present complaint, it appears that one old farmer has died in suspicious circumstances and inquiry in that regard is being conducted by the police and that funeral rites were performed by the family members without giving any intimation to the police. News item further mentioned that deceased was being ill-treated. Thereafter he was found dead. It is pertinent to note that the news article does not mention the name of the deceased or any of

1. AIR 1992 Supreme Court 2206

2. 2002 6 Supreme Court Cases 670

3. 2003 Criminal Law Journal 4058.

the family members of the deceased. News article further mentions that deceased had two wives and children. Complaint does not mention that the deceased in this case had two wives. The complainant had collected certain documents in relation to the fact that his father had expired on 6th October, 2015 and that there was no complaint about the harassment being meted at him at the police station. Learned sessions Judge has however set aside the process by assigning cogent reason. In the impugned order it has been observed that the accused No.1 is Chief Editor and publisher and the accused No.2 is the Executive Editor. The complaint does not attribute specific overt act which amounts to commission of offence of defamation. It is further observed that the person other than the editor could be held responsible for libel provided, there were specific averments that they were responsible for selecting the defamatory matter which was published. On perusal of the complaint it can be seen that the complainant had made general allegations that the accused have published false information without verifying its veracity. The Court also noted that the alleged news article does not refer the name of father of the complainant and as per the news article the person who had died had two wives. However, in the entire complaint it is not

mentioned that the father of the complainant had two wives. The Court also took into consideration the fact that similar news item was published in news paper Daily Tarun Bharat and Daily Pudhari having same contents. However, no proceedings were initiated against the said news paper. After analysing the material on record, the complainant had not brought on record any *prima facie* material to show that the alleged news published in Daily Sakal dated 8th October, 2015 relates to his father. The alleged news items reveals that one aged person has died at Lingnoor. News item does not indicate that the person who died at Lingnoor is permanent resident of Lingnoor. The Court also observed that the learned Magistrate has failed to take note of settled principle of libel in respect of Chief Editor and Executive Editor and has wrongly issued the process against the accused.

8. After going through the documents on record and after hearing both sides, I do not find any reason to take a different view of the matter, the Sessions Court has rightly observed that there was no material before the Court to take cognizance of the complaint of defamation against the Respondent Nos.1 and 2. The complainant has drawn an inference that the Respondent No.1 being Chief Editor Publisher and the Respondent No.2 being Chief

Executive Editor were personally and jointly responsible for defamatory news. The order of process cannot be issued merely on the basis of inference and in the absence of cogent material to take cognizance of the complaint. In the case of *K.M.Mathew Vs. State of Kerala* (supra) relied upon by the counsel for the respondents it is observed that for a Magistrate to take cognizance of the offence as against Chief Editor, there must be positive averments in the complaint of knowledge of objectionable character of the matter. In another decision of *K.M.Mathew Vs. K.A. Abraham* (supra) it was observed that

“the provisions contained in the Act (Press and Registration of Books Act, 1867) clearly goes to show that there could be presumption against the Editor whose name is printed in the newspaper to the effect that he is Editor of such publication and that he is responsible for selecting the matter for publication. Though a similar presumption cannot be drawn against the chief Editor, resident Editor or managing director, nevertheless the complainant can still allege and prove that they had knowledge and they were responsible for the publication of defamatory news item. Even the presumption under sec.7 is the rebuttable presumption and the same could be proved otherwise. That by itself indicates that somebody other than Editor have also be held responsible for selecting the matter for publication in a newspaper.”

This Court in the case of *Vivek Goenka Vs. State of Maharashtra* (supra) has also taken a view that in the absence of positive

avermment in the complaint that Managing Director was having knowledge of, or he was directly responsible for publication of said imputation such persons cannot be prosecuted for the averments of defamation.

9. In the light of principles laid down by the Apex Court stated herein above and considering the material on record, it is not possible to hold that the complainant had met out the *prima-facia* case to issue the process for the offence of defamation against the Respondent Nos. 1 and 2. It is also necessary to note that act of defamation cannot be based on inferences. The factual aspects of the matter stated herein above also do not make out case for issuance of process. I do not find any reason to devoid the reason assigned by the Sessions Court for setting aside the order of process for the reasons assigned herein above. The impugned order is not required to be interfered and therefore this revision application is devoid of merits and the same is required to be dismissed.

ORDER

Criminal Revision Application No. 166 of 2017 is dismissed.

Sachidanand
Kuttan Nair

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(PRAKASH D. NAIK, J.)