

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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CRIMINAL APPLICATION NO. 19 OF 2017

Abraham Mathai

.. Applicant

Vs.

Joseph Dias & Anr.

.. Respondents

Mr. Shreeram Shirsat a/w. Mr. Amandeep Singh Sra for the Applicant.

Ms. Pinaz Contractor for Respondent No.1.

Mr. H. J. Dedhia, APP for Respondent No.2.

CORAM : SMT. BHARATI DANGRE, J.

DATE : 26th SEPTEMBER, 2019.

P. C. :

1. The present application assails order of the issuance of process under Sections 500, 506 of the Indian Penal Code and Section 66(1) of the Information Technology Act.

2. The Applicant is aggrieved by the manner of verification of the statement of the Complainant being recorded by the Metropolitan Magistrate under Section 200 of the Code of Criminal Procedure.

Submission of the learned Counsel is to the effect that the purpose of the statement of the Complainant being verified under Section 200 of the Cr.P.C. is to ascertain veracity of the complaint and it should meet with the basic requirement of making of stating as to how the offence

has been committed and how the accused persons are responsible therefor. It must give the required events and dates along with allegations/imputations and such statement must be recorded by the Magistrate. In absence of the said procedure being adhered to there is no compliance of Section 200 of the Cr.P.C. Learned Counsel for the Applicant has invited my attention to the verification statement of the Complainant which is on oath and signed by the Magistrate. I have gone through the said statement, which according to the Applicant lacks the necessary ingredients of Sections 500 and 506 of the IPC and therefore according to him, issuance of process is not in terms of Section 200 of Cr.P.C. Learned Counsel for the Respondent on the other hand would submit that the verification statement contain the gist of the allegations contained in the complaint and that is sufficient material for the Magistrate taking cognizance and acting upon the same.

3. Perusal of Section 200 of the Cr.P.C. reveals that when a complaint is referred to the Magistrate, the Magistrate before taking cognizance of an offence as alleged by the Complainant is bound to examine the Complainant on oath and the witnesses present, if any, and the substance of such examination shall be reduced into writing and shall be signed by the Complainant and the witnesses and also by the

Magistrate. An exception is only carved out in respect of public servant acting or purporting to act for discharge of his official duty or when the Court has made the complaint and if the Magistrate makes over the case for inquiry and trial to another Magistrate under Section 192 of Cr.P.C. A plain reading of Section 200 of Cr.P.C. clearly reflects that it enforces an obligation on the Magistrate to examine the Complainant. The said provision casts a duty on the Magistrate to ascertain from the Complainant the gist of his allegation as contained in the complaint and he would also ascertain and verify whether the offence as tried to be made out in the complaint is made out by specifying the ingredients and unless the verification statement substantiate the allegations/imputations against an accused, there will be no issuance of process by the Magistrate. It is no doubt true that the entire exercise is to be undertaken to ascertain, determine and get an assurance about the particulars mentioned in the complaint and that they are substantiated in form of the verification statement and it is only on being satisfied that it does so, the Magistrate is duty bound to issue a process.

4. Perusal of the verification statement of the Complainant signed by the Complainant and the Magistrate, clearly sets out that the accused used to send threatening messages through his personal mobile via SMS

thereby threatening him of dire consequences and also it had of bad language, which was alleged to be not tolerated by any normal man in the society. Copy of the text messages is annexed with the complaint. A reference is then made to two emails dated 27.01.2012 and 17.02.2012 and specific averment is made that the said emails are not only addressed to the Complainant but also to several other people and the list of people and the emails are part of the enclosures of the complaint. The Complainant then proceed to say that through emails and messages the accused had defamed him by making false allegations. The effect of such action is also stated in paragraph 10 of the verification statement of the Complainant which has resulted his reputation being lowered in the society and that he has faced various problems in his day to day life. In the very beginning of the said verification statement the Complainant had categorically stated that he rely upon the statement and averments made in the complaint and undertake that said statement and averments be treated as part and parcel of the present verification statement.

5. On perusal of the verification statement of the Complainant which is signed by the Magistrate, I am of the considered view that contain the gist of the imputations levelled against the accused by making reference to the necessary facts. The contention of the learned

Counsel for the Applicant that it ought to have contained the details of the messages, which run into six pages and the two emails, which also exhaustive one and since they are absent from the verification statement, the Magistrate was not justified in issuing the process, do not appear to be a proper interpretation of Section 200 of the Cr.P.C. The purpose of verification being achieved by the verification statement of the Complainant and the Magistrate being satisfied on the basis of the said verification statement about the genuineness and truthfulness of the contents of the complaint which have been substantiated in the examination on oath, there is no discrepancy in the issuance of process. The Complainant in the verification statement has already stated that the details are to be contained in the complaint which include the details of the phone messages and the contents of the email address. The Complainant has also stated that the messages and emails were forwarded to the persons in the society with an intention to disrepute the Complainant and to malign his image. The ingredients of Section 500 of the IPC being made out in the complaint, I do not find that the course of action adopted by the Magistrate is not compliant with Section 200 of Cr.P.C.

6. The Application is being without any merits deserved to be

dismissed and is accordingly dismissed.

7. Needless to state that the complaint is pending since 2012, it is expected that the proceeding would be completed expeditiously. It is made clear that the aforesaid observations are prima facie in nature and limited to the purpose of decision of issue involved.

[SMT. BHARATI DANGRE, J.]