

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Amk

CRIMINAL APPLICATION NO. 71 OF 2018

Ms. Neeta Tulshidas Raikar .. Applicant
Vs.
State of Maharashtra & Ors. .. Respondents

Mr. Karma Vivan A/W. Mr. Shailesh Kharat I/b Apoorv
Singh for the Applicant.
Mr. H. J. Dedhia, APP for the Respondent-State.
Mr. Kapil P. Dave for Respondent Nos.2 & 5.

CORAM : SMT. BHARATI DANGRE, J.
DATE : 24th SEPTEMBER, 2019.

P. C. :

1. The dispute between the members of the Co-operative Housing Society by name Charkop Sargam Co-operative Housing Society has led to filing of a complaint before the Additional Chief Metropolitan Magistrate by the present Applicant who is a practising Advocate and resident of Flat No.102 of Charkop Sargam Co-operative Housing Society Ltd., Kandivali (West), Mumbai. The Applicant along with her brother purchased the said flat and according to her necessary charges for getting the flat transferred in their name, amounting to Rs.51,000/-

came to be deposited. On demanding receipt for the said amount, the same was not provided and instead a Society Development Fund Receipt was issued. Repeated requests to provide the requisite receipt were made and this was the beginning of the discord between the Applicant and the Respondents who are the office bearers of the said society and the dispute arose since 2013. In 2014, a reference was made to certain trivial incident and it was alleged that the accused uttered certain words which defamed the Applicant and lowered her reputation in front of members of the society.

The ultimate allegation came on 18.02.2016 when a complaint came to be lodged by the Applicant in the Court of Judicial Magistrate First Class and the said complaint made reference to a minutes of the Special General Meeting of the Society held on 30.11.2014. The allegations in the said complaint is that certain imputations were made against the Applicant in the said meeting in order to defame her and that imputation attracted the provisions of Section 499 of the IPC. It was further alleged that the said minutes of the meeting were circulated to the members of the in society, thereby resulting in lowering her image and reputation and making out an offence of defamation.

2. The Additional Chief Metropolitan Magistrate, 24th Court, Borivali, Mumbai by his order dated 30.09.2016 refused to interfere and recorded that on perusal of the minutes of the meeting of the society, a general statement is bound and there appears to be no ulterior motive on the part of the said person. The said order was upheld on a similar reasoning being recorded by the Additional Sessions Judge, Dindoshi, Goregaon, Mumbai in his order dated 12.12.2017.

3. In the backdrop of the facts, I have heard learned Counsel for the Applicant and Respondents. The minutes of the meeting dated 30.11.2014 which have been alleged to contain defamatory statement are placed on record at page 181 of the paper book. Perusal of the said minutes discloses that the Applicant during the meeting posed certain questions and which were sought be responded by the Accountant. However, the Applicant was not satisfied with the reply and she intervened. Thereupon the following words came to be uttered by one Shashank Chowkidar “If any person, a senior member and a woman advocate is behaving in such a fashion then that is insulting”. It is, thus, words which are alleged to be defamatory and prompted to the Applicant file proceedings seeking invocation of Section 499 of the IPC

against the accused.

4. Section 499 of the IPC defines defamation and in clear terms it conveys which were the words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. Explanations 1 to 4 are carved out in terms of the explanation. On perusal of the complaint in question, the position which emerges is that there is no intention on the part of the accused to harm reputation of the Complainant nor any actual harm is discerned from the said imputation alleged to be uttered in the course of the discussion in the meeting of a co-operative society. The utterances which are contained in the minutes of meeting are devoid of any mens rea. The necessary ingredients of Section 499 of the IPC, being an intention to harm or having knowledge or reason to believe such intention will harm reputation of the person. No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers his credit. The complaint has failed to set out any

ingredients of Section 499 of the IPC and the Magistrate as well as Appellate Court are perfectly justified in not taking cognizance of the same.

5. After reading of Section 499 and on perusal of the complaint and in the light of the concurrent opinion of the lower Courts resulting into dismissal of the complaint, I have no inclination to interfere. Criminal Application is dismissed. No order as to costs.

[SMT. BHARATI DANGRE, J.]