

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.697 OF 2015**

Mrs. Varsha Deshpande .. Applicant

Vs

The State of Maharashtra & Anr. .. Respondents

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Mr. Uday P. Warunjikar for the Applicant.

Mr. Ajay Patil, A.P.P. for the State.

Mr. Aashish Satpute for Respondent No.2.

CORAM: SMT. BHARATI DANGRE, J.

DATED : 26TH SEPTEMBER, 2019.

P.C:-

1. The Applicant, an advocate by profession and a founder Secretary of the Dalit Mahila Vikas Mandal, Satara is aggrieved by the issuance of process by the Additional Chief Metropolitan Magistrate, 40th Court, Girgaon, Mumbai in Criminal Complaint No.493/SS/2013 instituted by the Jaslok Hospital & Research Centre, through its authorised representative. The Applicant claims

to be a member of the State Inspection and Monitoring Committee appointed by the State of Maharashtra for effective implementation of the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (“**the PCPNDT Act**”). She also assert that she is a member of the Task Force appointed by the Bombay Municipal Corporation for effective implementation of the provisions of the PCPNDT Act and claims to be a known Resource Person in connection with PCPNDT Act and is also a Member of the Expert Committee constituted by the Government of India to lay down Code of Conduct and Guidelines to be observed by the State and District Appropriate Authorities under the PCPNDT Act.

2. The Applicant filed a complaint under Sections 28(1)(b) of the PCPNDT Act and its Rules 1994 alleging offences punishable under Sections 3A, 5, 6, 17(4-a to e), 17(4-a to e), 18, 19, 20(3), 22, 23(1), 23(3), 25, 29 of the PCPNDT Act in which she alleged that she happened to read a local newspaper by name “Mid Day” dated 14/06/2013, in particular, its Promotional Feature

Supplement which contains certain information about Accused Nos.6 and 7 in the said complaint. The complaint refers to the celebrity couple apparently having a third child through surrogacy and the news was about a baby boy being born out of this surrogacy. The write-up published state that the couple was eager and anxious to welcome their third child and preparations were on for the new arrival.

3. The newspaper is having an e-paper Edition and the Complainant downloaded the said news item on her laptop and she also incorporated the link related to the news item. Based on the said reported news item, she alleged that Accused Nos.6 and 7 are guilty of gross violation of provisions of the PCPNDT Act and has sought to select the sex of the child to be born from the surrogate mother by use of Pre-Natal Diagnostic Technique. She also alleged that other accused persons have declared the sex of the child while in the womb of the mother and since the foetus was revealed to be a "Baby Boy" prior to the birth, it is in clear contravention of the provisions of the enactment. In spite of

several notices addressed to the accused to provide for information and documents, the same were not supplied to her. Since the Appropriate Authorities have failed to take any cognizance of the allegations, the Complainant filed the said complaint where she gave the details of an online complaint preferred by her to the competent authorities viz. Municipal Commissioner, Mumbai Municipal Corporation, Health Officer of Mumbai Municipal Corporation as well as different authorities of the PCPNDT Act at the State level as well as at the level of Government of India. She also lodged the said complaint on the toll free help line introduced by the State of Maharashtra. Since no action was taken, she instituted the said complaint under Section 28(1)(b) of the PCPNDT Act and requested to take cognizance of the complaint. The complainant also sought a direction against Accused Nos.1 to 7 to make available the record in their possession to the Complainant. Relief was also sought to try and convict the accused persons under the relevant provisions of the PCPNDT Act and the Rules made thereunder for the alleged violation.

4. To continue with the narration of events, the Applicant being aggrieved by the Order dated 23/10/2013 passed by the Additional Chief Metropolitan Magistrate where the Complaint preferred by her came to be rejected, filed a Writ Petition in this court which is numbered as Criminal Writ Petition No.4164 of 2013. The learned Single Judge of this Court after considering the statutory scheme of the PCPNDT Act concluded that it is for the Magistrate to consider whether the demand of documents/records from the Appropriate Authority is genuine and bona fide and the discretion is vested in him, which he is expected to exercise judiciously, keeping in mind all the relevant facts. Learned Single Judge did not find any infirmity in the impugned order and upheld the order passed by the Magistrate rejecting the Complaint filed by the Applicant under Section 28(3) of the PCPNDT Act and the said Writ Petition came to be rejected on 19/06/2014.

5. The Medical Superintendent of the Jaslok Hospital & Research Centre, Bombay instituted a complaint in the Court of the Additional Chief Metropolitan Magistrate, 40th Court,

Girgaon, Mumbai on 20/08/2013. In the said complaint which was filed with an authorization from the Hospital & Research Centre, it is claimed that it is one of the oldest tertiary care, multi specialty trust hospitals in the country and has an attached College of Nursing. It also claims to have 35 established specialties and equipped with state of the art equipments, manned by trained and dedicated staff. It also made reference to the research activities carried out by it in various streams. It admitted of having full-fledged IVF (In Vitro Fertilization) Department which is a major treatment for infertility, when other methods of assisted reproductive procedures fail and the said IVF Centre is headed by Dr. Firuza Parikh, a pioneer in the field of IVF, who has innovated techniques such as cumulus aided transfer for the first time in the world and this has been recognized as one of its kind of innovation at all levels.

6. In this backdrop, the Complainant allege that the defamatory statements made by the Applicant were deliberately made with an intention to harm the reputation of the Trust. The complaint then

proceeds to make a reference to a newspaper report and also make reference to a transcript of the interview of the Applicant, who had appeared on a TV channel and voiced herself by stating that IVF procedure was conducted by the Complainant as well as the Director of the IVF Centre and celebrity couple was named in the said interview. The complaint makes an averment that the celebrity couple never consulted Dr. Firuza Parikh, the Director of the IVF Centre or the Complainant Hospital for any surrogacy treatment as alleged by the Applicant. The Bombay Municipal Corporation and Health Department, which undertook an enquiry also reiterated that Dr. Firuza Parikh never undertook the treatment of surrogacy of the celebrity couple.

The complaint also make a reference is also made to the news published on the front page of “The Free Press” dated 18/06/2013 which carried a statement made by the Applicant to the following fact:

“We found through our sources that Dr. Firuza Parikh had done these tests. Hence, we wanted to

stop the crime and lodge a complaint with the BMC to find out the truth”.

7. Based on this reporting, the complaint allege that without verifying and ascertaining the truth, public statements were issued in deliberate and intentional manner with the sole object of harming the reputation of the Complainant as also Dr. Firuza Parikh. The complaint further allege that the news items were widely circulated in the newspaper and the electronic media within the jurisdiction of this Court and several members of the public known and unknown started calling up the Complainant for enquiries. By the said complaint, the Court was, therefore requested to issue process against the Applicant for the offence punishable under Section 500 of the IPC and the Accused be dealt with in accordance with law.

8. On this complaint, the Metropolitan Magistrate called for a police report and received the same on 14/02/2014, and, thereafter, issued process under Section 500 of the IPC against the Applicant

and made it returnable on 01/04/2014. The said order is the subject matter of the present writ petition.

9. Mr. Warunjikar, learned counsel appearing for the Applicant state that the Applicant has made a categorical statement in the Application that the complaint preferred by the Applicant under Section 28(1)(b) of the PCPNDT Act was pending in the Court of Metropolitan Magistrate, 37th Court, Esplanade, Mumbai. Mr. Warunjikar, learned counsel submits that the said complaint is now dismissed and, resultantly, in the light of the dismissal of the aid complaint, the complaint filed against the Applicant would not survive. Without prejudice to the said submission, he would submit that on the face of it, the complaint would not disclose an offence punishable under Section 500 of the IPC and the entire report is based on newspaper cutting and it has not conclusively established the source of information and without verifying the said aspect of the matter, the Magistrate has erred in issuing the process.

10. On perusal of the entire chronology of events that has been placed in the Application, various orders and the complaint, it is not in dispute that the Applicant on becoming aware of the newspaper report about the article in relation to the celebrity couple gave interview to the media and alleged that they are guilty of violation of provisions of PCPNDT Act. This calls for no verification since she herself has approached the Metropolitan Magistrate by filing a regular Criminal Complaint being RCC No.70 of 2013 by invoking the provisions of Section 28(1)(b) of the PCPNDT Act. In the said complaint, she had admitted about downloading the article and believing that it contained an element of truth, she requested the authorities to take cognizance of the complaint preferred by her under Section 28(1)(b) of the PCPNDT Act.

11. The allegation made in the Criminal Complaint No.493 of 2013 instituted under Section 500 of the IPC by the Jaslok Hospital & Research Centre against the Applicant is to the effect that based on the half-baked information, ascribing it to be so, she

went to the media and gave interview. A reference is made to a programme titled "MUMBAI LIFE" which was telecast on 17/06/2013 on a TV channel where the Applicant directly attributed that the IVF procedure was conducted by the Complainant as well as the Director of its IVF Centre and there was a misuse of the procedure with the object of sex determination of the child. She also alleged that all the aforesaid people have conspired to commit the offence.

12. The Complainant also alleged that Dr. Firuza Parikh made a telephone call to the Applicant and clarified that they were not involved in the surrogacy treatment and sex determination that they have been charged with.

13. A perusal of the complaint filed against the Applicant discloses that by spoken words, she has levelled imputation against the celebrity couple as well as intended to harm the Complainant and the IVF Specialist working with the Complainant and this was with an intention to harm and having knowledge that such an

imputation will harm the reputation of the persons mentioned in the complaint.

The offence of defamation under Section 499 of the IPC contemplates any imputation by words either spoken or intended to be read or by signs, concerning any person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such a person is said to defame. No imputation is said to be harmed a person's reputation unless it directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or his calling or lowers the credit of that person. The ingredients of the offence of defamation which could be discerned from the definition as contained in Section 499 of the IPC necessarily require that there must be a defamation as understood in terms of Section 499 of the IPC. The Applicant levelled the imputation which were run by the print media and also the electronic media since she appeared on a T.V. channel. The imputation which she levelled, on being published in newspaper were read widely and the interview telecast on the T.V. channel was

also free for all viewers. The imputation specifically referred to the Complainant and hospital as well as the Director of its IVF Centre and it is not in dispute that with the said information the present Applicant had filed a complaint under Section 28 of the PCPNDT Act. There is no denial about the fact that she possesses knowledge and without verifying its authenticity, her statement came to be widely published knowing it to be false, causing injury to the reputation of the Complainant.

The necessary ingredients of the offence of defamation being satisfied, the Magistrate had issued the process against the Applicant. On perusal of the police enquiry report dated 14/02/2014, the Magistrate was on being satisfied about the veracity of the complaint preferred by the Complainant and on complying with the imperative conditions before issuing the process as contemplated under Section 202 of the Cr.P.C., had issued the process. Tested on the parameters of dealing with a complaint with the procedure as set out in the Code, I do not find any legal infirmity or error in the order issuing process by the Magistrate. The Applicant has approached this Court seeking

quashment of the said order passed by the Additional Chief Metropolitan Magistrate in exercise of the inherent powers conferred on this Court. The power of quashing which is available to this Court is to be sparingly and consciously exercised and unless and until there is an abuse of process of law, this Court would be justified in not exercising the said power. Once it is recorded that the order of the Additional Chief Metropolitan Magistrate do not suffer from any legal infirmity, I am not inclined to grant any relief to the Applicant. Resultantly, the present Criminal Application is dismissed with no order as to costs.

(SMT. BHARATI DANGRE, J.)