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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 374 OF 2021

Meenakshi Menon
Versus
1. Punita Toraskar
2. The State of Maharashtra

...Applicant

...Respondents

Mr. Karl P. Rustomkhan for the Applicant.

Mr. A.R.Patil, A.P.P for the Respondent No.2-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 23rd JULY, 2021
(Through Video Conferencing)

P.C. :

1. At the outset, it is made clear that it is not necessary to issue notice to the respondent No. 1, as of today, process has not been issued as against the respondent No.1 by the Trial Court.

2. Heard learned Counsel for the petitioner and the learned APP for the State.

3. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.

4. By this petition, the petitioner has impugned the order dated 3rd March, 2021, passed by the learned Metropolitan Magistrate, 62nd Court, Dadar, Mumbai below Exhibit 1 in C.C.No. 6200127/SW/2019, by which the learned Judge postponed the issuance of process, in order to make inquiry or investigation into the case, under section 202 (1) of the Criminal Procedure Code.

5. The short submission of the learned Counsel for the Applicant is that the learned Judge overlooked the provision of Section 16(3) of the Criminal Procedure Code, whilst postponing the issuance of process. Learned Counsel for the Applicant submits that Section 16(3) of the Criminal Procedure Code gives jurisdiction and powers to every Metropolitan Magistrate throughout the Metropolitan area. Learned Counsel for the Applicant submits that the learned Judge failed to consider that the Respondent No.1, in the complaint filed by the petitioner before the Metropolitan Magistrate, is a resident of Andheri and as such, Section 16(3) of the Criminal Procedure Code comes into operation and that there was no occasion for the learned Judge to postpone the issuance of process on the said premise i.e. on the point of jurisdiction. He further submits that in fact, the learned Judge had earlier vide order dated 7th November 2019 passed

below Exhibit 1 in the aforesaid case observed in para 2, that the Court had jurisdiction to entertain the complaint and had directed that the complaint be registered as a summons case. He submits that once having passed the said order dated 7th November 2019 observing that the court has jurisdiction to entertain the complaint, there was no occasion for the learned Judge to subsequently, postpone the issuance of process on the said premise. Learned Counsel relied on the following judgments;

- (i) Saregama India Limited V/s. Nomad Films and Ors. in Criminal Writ Petition No. 506 of 2018 dated 9th March, 2021.
- (ii) Shivjee Singh V/s. Nagendra Tiwary and Others - (2010) 7 Supreme Court Cases 578.
- (iii) Sevantilal S. Shah V/s. State of Gujarat – 1969 CRI L.J. 63.

6. The learned APP does not dispute the proposition of law as advanced by the learned Counsel for the Applicant.

7. Perused the papers. The Applicant in the original complaint, who has filed a private complaint as against the respondent No.1 in the Court of the learned Metropolitan Magistrate, 62nd Court, Dadar, Mumbai alleging an offence punishable under Section 500 of the Indian Penal Code. The allegations made by the Applicant in the said complaint is that on 12th

September 2019, the respondent No.1 had published certain defamatory and false information about the Trust, of which the Applicant is a trustee with respect to reservation of forest cover in the Aarey colony, thereby defaming the trustees of the said Trust, including the Applicant. The said defamatory contents/information were allegedly published by the respondent No.1 on her public profile on a social media platform on the internet i.e. on Facebook.

8. It is a matter of record, that the learned Magistrate kept the case i.e. the private complaint for hearing on the territorial jurisdiction of the Court and vide order dated 7th November 2019 held that the 62nd Court, Dadar, Mumbai had jurisdiction to entertain the complaint and accordingly, directed that the complaint be duly registered as a summons case. Pursuant to the order dated 7th November 2019 the complaint was registered as Summons Case bearing C.C. No. 6200127/SW/2019 and the matter was kept for recording verification statement of the Applicant on 8th January, 2020 . On 8th January 2020, the learned Magistrate recorded the verification statement of the Applicant and thereafter the matter was adjourned from time to time. On 3rd March 2021, the learned Magistrate passed the impugned order and as such postponed the issuance of process on the sole premise that inquiry and investigation was necessary under section 202(1)

of the Criminal Procedure Code. The learned Magistrate directed the Applicant (complainant) to produce evidence in the inquiry under section 202 of the Criminal Procedure Code. It is pertinent to note, that under section 16(3) of the Criminal Procedure Code, the jurisdiction and power of every Metropolitan Magistrate extends throughout the metropolitan area. In the facts, it was not necessary to hold an inquiry under Section 202 of the Criminal Procedure Code, considering the fact, that the Respondent No.1 is a resident of Andheri, Mumbai, which clearly falls within the territorial jurisdiction of the learned Metropolitan Magistrate, 62nd Court, Dadar, Mumbai. In fact, vide order dated 7th November 2019, the learned Magistrate, himself, had held that the complaint filed by the Applicant (original complainant) was maintainable and that the Court had jurisdiction to entertain the said complaint.

9. Having regard to the aforesaid, the impugned order dated 3rd March 2021 passed by the Metropolitan Magistrate, 62nd Court, Dadar, Mumbai below Exhibit 1 in C.C. No. 6200127/SW/2019 cannot be sustained. Accordingly, the same is quashed and set aside. The learned Magistrate to commence with the complaint, from the post verification stage.

10. Rule is made absolute on the aforesaid terms and the application is accordingly disposed of.

11. It is made clear that this Court has not gone into the merits of the case.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.