

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 788 OF 2021

(Yusuf Khan s/o Usman Khan ..vs.. Firoz Khan s/o Gauskhan)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.R. Prasad, Counsel for the applicant.

CORAM : ROHIT B. DEO, J.

DATED : 17-09-2021

The applicant-Yusuf Khan Usman Khan is arraigned as accused 7 in Summary Criminal Complaint 193/2008 instituted by non-applicant-Firoz Khan Gauskhan seeking initiation of proceedings under Sections 500 and 501 read with Section 34 of the Indian Penal Code (IPC).

2. The learned Magistrate was pleased to issue process for offences punishable under Sections 500 and 501 read with Section 34 of the IPC vide order dated 29-9-2020. Dissatisfied, the applicant is invoking the inherent powers of the Court under Section 482 of the Code of Criminal Procedure (Code).

3. It is alleged in the complaint that a pamphlet containing material, *ex facie* scurrilous and defamatory, was distributed amongst the members of the Muslim community, at or near the Masjid. The pamphlet purports bear the name of the accused including the

applicant as the authors and alleges serious malpractices and dishonest conduct concerning the tenure of the complainant as the trustee of Usufiya Darul Ulum Eidigah Trust, Malkapur. It would not be necessary to make a reference in any detail to the contents of the pamphlet since it is not even argued by the learned Counsel Mr. A.R. Prasad that the contents are not defamatory.

4. The learned Counsel Mr. A.R. Prasad would, however, argue that there was no material on record for the learned Magistrate to *prima facie* believe that the applicant is responsible for the defamatory publication. I am afraid, the submission is contrary to the material on record.

5. I have perused the statements of the witnesses, which are recorded during the enquiry under Section 202(1) of the Code. The statement of senior lawyer Mr. Bhalerao is recorded, which is to the effect that he issued the reply on behalf of the accused to the notice dated 10-12-2007 issued by the complainant. The learned Magistrate notes that in the reply notice, the accused not only admitted to have published the defamatory material, the accused declared that the complainant ought to be happy that the more serious wrongdoings are not as yet made public.

6. Mr. A.R. Prasad would submit that the lawyer

issued the reply without any authority and in support of the submission invites my attention to a notice dated 30-4-2010 issued by the accused to the learned Counsel alleging that he acted without authority. In my considered view, the text and the tenor of the notice dated 30-4-2010 clearly reveals, that the attempt was to escape the consequences of the publication of the defamatory material. The notice dated 30-4-2010, which is issued more than two years and four months after the reply dated 18-12-2007, is clearly an after thought. This is a *prima facie* view and it would ultimately be for the trial Court to record an appropriate finding.

7. It is well settled that if there is material on record to warrant a trial, issuance of process would be justified and the learned Magistrate is not expected to conduct a mini trial or to microscopically examined the probative value of the material on record from the perspective of the likelihood or otherwise of conviction. I do not see any error in the view of the learned Magistrate that the material on record, which includes the statements of the complainant and the other witnesses which are recorded in enquiry under Section 202 of the Code, is sufficient to issue process.

8. The learned Counsel Mr. A.R. Prasad would submit that having directed an enquiry under Section 202 of the Code, the learned Magistrate was obligated to

look into the material collected during the course of the enquiry. The learned Counsel is right on principle. However, as a fact, the learned Magistrate has indeed considered the material collected in the enquiry under Section 202 of the Code.

9. I see no reason to exercise inherent powers.

10. The criminal application is dismissed.

JUDGE

adgokar