

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1139 OF 2015

Amar Ranu
Versus
Harish Patel And Anr.

...Petitioner
...Respondents

....

Mr. Amar Ranu, Petitioner in person, present.

Mr. Pritam P. Runwal, Advocate for Respondent No. 1.

Mr. A. D. Kamkhedkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 18th JULY, 2022.

PER COURT:

1. The Petitioner has challenged the order dated 13.03.2015 passed by the Special Judge (CBI), Greater Mumbai in Criminal Revision Application No.1567 of 2014. The said application was preferred by the Petitioner challenging order dated 21.11.2014 passed by the learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai, rejecting application for discharge dated 22.07.2013 preferred by the Petitioner in C.C.No.12/SW/2006.

2. The Respondent No.1 is the complainant in C.C.No.12/SW/2006. The complaint was filed alleging offence punishable under Section 500 of Indian Penal Code (for short “IPC”). The learned Magistrate had issued process for the offence

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punishable under Section 500 of IPC against the accused (Petitioner).

3. The complainant has alleged that, the accused was a Chief Promoter of that society in the year 2001. Provisional Managing Committee of the society was formed on 22.07.2001 of which the complainant was a member. After formation of Managing Committee, the accused failed and neglected to handover the records, assets, cash worth Rs.77,177/- for which the Society has filed Criminal Complaint against accused and the same is pending. On 11.11.2005, the complainant was informed by the Chairman of Society that the accused is circulating letters to all members of society which contains the defamatory and malicious statements against complainant and a copy of the same was handed over to him. The complainant received a set of photocopies of three letters dated 08.07.2002, 27.10.2003 and 05.11.2005 from the Chairman of Society on 11.11.2005 given to him by the accused which were also circulated by the accused to all members of the society. On reading the letters, the complainant was shocked that the letters contained defamatory statements against him by the accused. In the complaint, the complainant had made reference to the contents of the letters. It was alleged that the imputation caused harm to his reputation in the eyes of the members of Society. The letters

written by the accused contained defamatory allegations against complainant which are false to his knowledge and circulated by him to the members of the society, where the complainant is residing, with malafide intention to defame him in the eyes of members of society and lower his image and prestige. Writing of letters and circulating the same to the members of Society has caused damage to complainant's esteem and reputation in the estimation of the other persons, who have read the letters. The complaint was filed on 02.03.2006.

4. The petitioner preferred an application for discharge before the Court of learned Magistrate under Section 239 of Cr.P.C. The application was rejected. The Petitioner preferred Criminal Writ Petition No.2429 of 2009 before this Court challenging the order passed by learned Magistrate. The learned Advocate for Petitioner had submitted before this Court, during the hearing of the aforesaid Writ Petition that the application ought to have been made under Section 227 of Cr.P.C. but it was wrongly made under Section 239 of Cr.P.C. He therefore sought leave to withdraw the application made under Section 239 and apply a fresh under Section 227 of Cr.P.C. This Court by Order dated 04.11.2009 set aside the order challenged in the said Petition and directed that the application made by Petitioner for discharge under Section 239

stands withdrawn with liberty to the Petitioner to apply under Section 227 of Cr.P.C. If such an application is made, the Court shall consider it on its own merits without being influenced by its earlier decision.

5. The Petitioner preferred an application for discharge before the Court of learned Metropolitan Magistrate in C.C. No.12/SW/2006 and contended that in view of the grounds urged in the application and liberty granted by the High Court, the Petitioner to be discharged from the said proceedings. The Petitioner also filed written arguments in support of the application for discharge.

6. The learned Magistrate, 10th Court, Andheri, Mumbai vide order dated 21.11.2014 rejected the application for discharge preferred by the Petitioner. While rejecting the said application it was observed that, the application was preferred on 22.07.2013 and in the meantime plea of the accused was recorded on 02.01.2012 and the contents were read over to him to which he pleaded not guilty. The stage for filing discharge application had already gone as the plea has been recorded and therefore the accused cannot be discharged at this stage.

7. The order dated 21.11.2014 was challenged by the Petitioner by preferring Criminal Revision Application No.1567 of 2014

before the Court of Sessions. The said Revision Application was dismissed vide order dated 13.03.2015 and the learned Magistrate was directed to complete the trial within three months from the date of receiving the order.

8. The Petitioner has appeared in person. It is submitted that the learned Magistrate had issued process without application of mind. The order of process was cryptic. It was one line Order stating that, "Issue process for offence under Section 500 of IPC against accused Amar Ranu". The complaint was barred by law of limitation. It was filed beyond limitation prescribed under Section 468 (1) of Cr.P.C. The cause of action had occurred in 1997-2003 and complaint was filed in 2006. The impugned complaint is counterblast to the proceedings initiated against the complainant. The Respondent No.1 is prime accused for offences under Sections 464, 406, 465, 471, 420 r/w Section 120-B and Section 34 of IPC r/w Section 146(p) of the Maharashtra Cooperative Societies Act, 1960. Three Criminal cases are pending against Respondent No.1 before the Court of learned Metropolitan Magistrate at Andheri, Mumbai. The Petitioner has filed written arguments and contended that the discharge application was filed before the trial Court in accordance with order passed by the High Court in Criminal Writ Petition preferred by the petitioner. The application

for discharge was rejected on the ground that the plea has been recorded. The question of law involved is whether plea recording of such criminal process order, which itself *ab initio* bad in law, unlawful, not maintainable and without jurisdiction, is legal. It is contended that the answer is 'No'. It is also contended that the complaint lacked territorial jurisdiction as per Section 202(1) of Cr.P.C. The petitioner does not stay in the jurisdiction of Metropolitan Magistrate, 48th Court and mandatory inquiry under Section 202(1) of Cr.P.C. was imperative and mandatory before issuance of process which was not done by the Court and the process was issued hurriedly in a mechanical manner. The case at hand squarely falls within the parameters indicated in category (7) of the case of *Bhajan Lal*. Reliance is placed on the decision of the Supreme Court in the case of *Sunil Bharti Mittal Vs. Central Bureau of Investigation* reported in (2015) 4 SCC 609, decision of this Court in the case of *Barakara Abdul Aziz Vs. National Bank of Oman* (Criminal Application No.3146 of 2012), *M/s. Eicher Tractor Ltd and Ors. Vs. Harihar Singh* and order passed by this Court dated 4th September 2014 in Criminal Writ Petition No.1218 of 2001 in case the case of *Mr. A.K. Magare and Others Vs. Shree Sai Enterprises and Another*.

9. Learned Advocate for Respondent No.1 submitted that, the

application for discharge was not maintainable in law. Plea of the accused was recorded. The Petitioner has been delaying the proceedings before the trial Court. The grounds urged by the Petitioner cannot be considered at this stage. The complaint was filed within the law of limitation. The process was issued with application of mind.

10. On perusal of the complaint it can be seen that, the averments in the complaint makes out prima facie case for issuance of process against the accused for offence under Section 500 of IPC. The learned Magistrate had issued process for the aforesaid offence. The order issuing process need not be elaborate or in detail. The order reflects application of mind. There is no substance in the submissions that the Order issuing process lacked territorial jurisdiction or it was mandatory to conduct inquiry under Section 202(1) of Cr.P.C.

11. The submissions of the Petitioners are based on disputed questions of fact. On reading the complaint it is apparent that the complainant learnt about defamatory documents being circulated by the accused on 11.11.2005. The complaint was filed within law of limitation. The complaint is not filed beyond limitation prescribed by law. It is not barred by law of limitation in any manner. From the averments in the Petition and the documents

annexed to this Petition it is apparent that, the petitioner had preferred application for discharge under Section 239 of Cr.P.C. before the Court of learned Magistrate and the said application was rejected. The Petitioner preferred Criminal Writ Petition No.2429 of 2009 before this Court and submitted that, in fact the application ought to have been made under Section 227 of the Cr.P.C. and it was wrongly made under Section 239 of Cr.P.C. The Petitioner sought leave to withdraw the application made under Section 239 with liberty to apply fresh under Section 227 of Cr.P.C. This Court set aside the impugned order and allowed the application for discharge to be withdrawn with liberty to apply under Section 227 of Cr.P.C. Apparently the learned Advocate appearing for Petitioner had advanced the submission which was not tenable in law by stating that, the application ought to have been made under Section 227 of the Cr.P.C. Pursuant to the Order dated 04.11.2009, the Petitioner had preferred an application for discharge before the trial Court apparently under Section 227 of Cr.P.C. The trial Court had recorded plea of the accused on 02.01.2012. The application for discharge was preferred on 22.07.2013. The trial Court observed that, plea has been recorded and therefore the accused cannot be discharged and rejected the application for discharge vide order dated 21.11.2014. It is

pertinent to note that the process was issued for offence under Section 500 of IPC and the procedure for the trial of the said offence was summons triable and the question of entertaining the application for discharge did not arise. The order dated 21.11.2014 was challenged before the Sessions Court by preferring Criminal Revision Application No.1567 of 2014. The Revision Application was rightly rejected by the learned Sessions Judge. While rejecting the revision application it was observed that, the learned Magistrate had failed to consider the law relating to discharge in criminal cases. It cannot be overlooked that the matter is under the provisions of Section 500 of IPC and the offence is triable as summons case. Hence, provision of Section 227 nor Section Section 239 are applicable for granting discharge. The procedure for discharge is not available in summons trial or summary trial. The criminal Revision was dismissed and the trial Court was directed to conclude the trial within three months from the date of the receipt of Order. No interference is warranted in the said Order. Perusal of complaint indicate that, prima facie case is made out for issuance of process. I do not find any infirmity in the order issuing process or order dated 13.03.2015 passed in Criminal Revision Application No.1567 of 2014. Decisions relied upon by the Petitioner deals with settled principles of law. The

same were delivered in the facts of respective cases. No ground is made out to quash the proceedings. Hence, I pass the following order :-

ORDER

- i.** Criminal Writ Petition No.1139 of 2015 is rejected and disposed off accordingly;
- ii.** Trial is expedited;
- iii.** The trial Court shall make an endeavour to conclude the trial within six months from the date of receipt of this order.

12. At this stage the Petitioner in person seeks extension of interim relief granted by this Court for a period of three months. The prayer is opposed by the Advocate for Respondent.

13. Since the interim relief was running in favour of the Petitioner since – 2015, the same is extended for a period of eight weeks from the date of uploading this order.

(PRAKASH D. NAIK, J.)