

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2291 OF 2021

Birendra Kumar

Petitioner

Versus

1. Y. V. Ramana Murthy
2. Ms. Neha Ojah
3. The State of Maharashtra

Respondents

Ms. Saswati Deb through Legal-aid, Advocate for the Petitioner.

Mr. Sandeep C. Kekane, Advocate for Respondent Nos. 1 and 2.

Mr. M. G. Patil, APP, for Respondent/State

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CORAM: PRAKASH D. NAIK, J.

DATE: 20th SEPTEMBER, 2022

PC:

1. The petitioner is aggrieved by order dated 25.02.2021 passed by Sessions Court, Thane in Criminal Revision Application No.276 of 2019, thereby setting aside the order issuing process dated 23.10.2019 passed by Learned JMFC, Vashi in SCC No. 5521 of 2019 and dismissing the complaint filed by petitioner against respondent No.1 and 2.

2. The petitioner is the complainant in SCC No. 5521 of 2019 filed before the Court of learned JMFC, Vashi.

3. The brief allegations in the complaint are as follows:-

(i) The complainant is working for Multi-National Company NCR Corporation since March 2011 and was deployed to service to SBI by his employer. He enjoys respect, dignity amongst members of society and general public.

(ii) The complainant started working from SBI GITC from 07.04.2011. In July 2015, he switched to AGS Transact Technology. He worked for SBI GITC from 07.04.2011 to 01.11.2018. There was no complaint or any issue from SBI against him. He had no criminal record. He comes from reputed family.

(iii) Accused No.2 joined SBI GITC in September 2017. Before she joined, the complainant had created reputation as honest and sincere employee of good moral character. The complainant was promoted and got salary increment

when he joined AGS Transact Technology in July 2015 and also promoted as Assistant Manager in 2018.

(iv) On 01.11.2018, Accused No.2 was posted to CGM CISO, Shri. Y. V. Ramanamurthy and to DGM Personal Department, Shri. Somnath Adhya. Complaint was lodged against the complainant that he has sexually harassed accused No.2. The accused had forced to remove the complainant from services immediately. Accused violated guidelines in the decision of Supreme Court in the case of *Vishakha* and misused powers as public servant..

(v) Without giving opportunity to the complainant to give explanation against false complaint, the complainant was removed from services. Due to behaviour of accused, the complainant faced humiliation and character assassination of him as many of his friends/competitors, who saw or read the notice called him to know what was this notice is about. The complainant has to face humiliation and he suffered from mental agony and trauma.

(vi) The accused No.2 and her colleagues went to CBD Police Station to file complaint against the complainant after two months of incident. Police did not take complaint as no case is made out of sexual harassment at work place and stated that it was only prank.

(vii) The accused No.2 gave written complaint against the complainant for mental harassment. The Assistant Commissioner of Police gave notice to complainant for chapter case which was subsequently closed after inquiry.

(viii) AGS Transact Technology Pvt. Ltd. on receipt of instructions from SBI immediately withdraw the complainant from GITC. The accused misused the power and put up the notice in SBI premises against the complainant for some personal issue. The notice/hoarding against the complainant had destroyed the professional career of the complainant and future employment. His access card of SBI GITC was blocked within hours of complaint against him. Before giving written complaint, the accused discussed the issue in

cabin of accused where accused No.2 to give written complaint even though the matter was not official issue.

(ix) The accused did not acknowledge the e-mail sent by DGM PM on 05.11.2018 where, it was written that this is not the case of sexual harassment. The accused humiliated the complainant although he was not guilty.

(x) Acting under instructions of the accused, the complainant was removed from services. Thereafter, it was assured that issue will be shared in due course. However, no issue was shared to complainant even after 9 months of removal from his services. The mother of the complainant sent request mail to SBI chairman to investigate the issue and in response of said mail, accused stated that the complainant's employer has removed him from services. On 09.12.2018, the accused stated that he will not allow the complainant to work in SBI premises and raised question over his character without enquiry and proper evidence.

(xi) The accused created panic situation after accused No.2 filed personal complaint which was not related to bank. The accused No.2 discussed issue with accused No.1, who encouraged her to file written complaint so that he can take action against the complainant event after knowing that said issued was not official. The complaint by respondent No.2 is not related to bank because nothing had happened inside bank premises or with bank infrastructure. It was entirely personal issue. The action was taken without giving any chance to hear the side of the complainant over the false sexual harassment complaint and the complainant was removed from services with humiliation. He suffered from trauma and depression.

(xii) On 05.11.2018, issue was raised by DGM PM who stated that issue was not of sexual harassment. After removing the complainant from services, some hoarding was writing up on SBI GITC against the complainant mentioning that complainant is prohibited from entering the SBI premises. In order to defame and mentally harass the

accused, action was taken against the complainant. Written complaint was sent to National Human Right Commission by the complainant on 09.01.2019. Direction was given to SBI by the Commission that the complaints be transmitted to the concerned authority for such action as deemed appropriate and the authority concerned is directed to take appropriate action within 8 weeks associating the complainant/victim and to inform them of the action taken in the matter.

(xiii) The complainant resigned from his previous company i.e. AGS Transact Technology Pvt. Ltd. and joined another company i.e. CMS Info System. The complainant was sent on deputation by his new company to SBI, GITC on 04.09.2019. Upon reaching SBI, GITC, one of the security guard asked the complainant to leave the Bank's premises without giving him any reason for the same. Another Bank's official accompanying the security guard told his reporting Manager that their company may lose their contract if complainant was deputed bank at SBI, GITC again. The

bank's official accompanying the security guard also mentioned that this action was being taken on orders received from CGM & CISO of SBI. Such comments from SBI Officials to company's Senior Management of complainant may lead to losing job of the complainant. These communications were made over verbal interactions and the Bank's officials have avoided any written communication.

(xiv) By printing, distributing and bringing to the notice of the persons working in the office and members of the public, the allegations and false declarations made by the accused against the complainant in the notices and false action taken by accused against complainant and resolutions, the accused have committed an offence of defamation under Section 499 of the Indian Penal Code which is punishable under Section 500 of the IPC. The accused have misused the powers and committed offence under Section 166, 166-A and 166-B of the IPC. The complaint was filed on 16.09.2019.

4. Learned 12th Joint Civil Judge Junior Division and Judicial Magistrate, First Class, Vashi issued process vide order dated 23.10.2019 against the accused under Section 499 punishable under Section 500 and 501 read with 34 of the Indian Penal Code.

5. The respondent No.1 preferred Criminal Revision Application No. 276 of 2019 before the Court of Sessions challenging the order of process passed by the Court of learned Magistrate. The learned Sessions Judge,, Thane allowed the Revision Application, set aside order of process and dismissed the complaint filed by the petitioner against respondent Nos. 1 and 2.

6. Learned Advocate for the applicant submitted that the learned Sessions Judge has erroneously set aside the order issuing process and dismissed the complainant. The learned Magistrate has issued process against the accused. Prima facie case was made out for issuing process. This was not a stage to consider the defence of the accused. Offence of defamation was clearly made out in the complaint. The

averments in the complaint as well as the documents placed before the learned Magistrate were sufficient to issue process. The learned Sessions Judge has ignored the contents of the complaint and documents on record. The petitioner was humiliated. The notice displayed in the premises and the action initiated by the accused has affected the reputation of the complainant. The action was false. Harm was caused to the reputation of the complainant in the society. Both the accused had acted in furtherance of common intention. There was no reason to display the notice prohibiting the complainant from entering into premises. There was no reason to initiate the complaint against the complainant. No case is made out for removing the complainant. Action initiated by accused had affected the career of the complainant. Offence of defamation is made out. The petitioner has annexed documents to the petition. The learned Sessions Judge failed to consider documentary evidence. The defamatory material was published. The report under Section 202 of Cr.P.C. does not

give rise to the inference that it is negative towards complaint. The Sessions Court ought to have appreciated that contradiction in statement is subject matter of trial.

7. The respondent No.1 and 2 has filed affidavit in reply opposing the relief sought in this petition. The petitioner has filed rejoinder to the reply filed by respondent Nos. 1 and 2.

8. The learned Advocate for Respondent Nos. 1 and 2 submitted that no case of defamation was made out. The revisional Court has rightly dismissed the complaint by setting aside the order of process. It is submitted that the complaint dated 01.11.2018 was submitted through e-mail to DGM (IT-HR and co-ordination) alleging harassment and stalking by the petitioner. It was also stated how complainant took her contact number and kept on messaging her. How he hacked her mobile phone and kept on threatening her and her family members. The petitioner was relocated by his employer M/s. AGS at another project. The respondent No.2 had neither ordered nor have any

powers of placing alleged hoarding/notice in GITC premises. There was no such hoarding/notice placed against the petitioner. The petitioner being withdrawn from services, was supposed to surrender the access card to the work premises to SBI staff which he failed deliberately. The blocking of access card is usual bank's security procedure, on ceasure of services from bank/vendor employee. The officials of State Bank of India has acted in terms of the powers delegated to them and to provide safe working environment for employee working in Department. The petitioner is relying upon exhibits which were not part of complaints. The petitioner has failed to reproduce the imputation material, if any, alleging that he is being defamed by any person. There is no defamation. The complaint is concocted. The learned Magistrate had directed to inquiry under Section 202 of Cr.P.C.. Statement of the petitioner was recorded in which he has stated that he has filed the complaint to know reason of his removal from the job. He was not removed from the job by AGS. He

was placed in different organization by AGS. He continued to work for one more year. The statement of respondent No.2 was recorded by Inquiry Officer where she has narrated her ordeal. The Inquiry Officer on the basis of statements recorded gave negative report which was submitted to the Court. Without assigning any reason, learned Magistrate has discarded the report under Section 202 of Cr.P.C. The respondent No.2 made written complaint on 09.02.2019 to Senior Inspector of Police, CBD Belapur, Navi Mumbai bringing all the facts and mental harassment caused by petitioner. On 28.02.2019, she lodged NC complaint bearing No.482 of 2019 against the petitioner stated that the petitioner had hacked her mobile phone and threatened her family members of dire consequences. Copy of the NC complaint has been annexed to the affidavit in reply on 02.03.2019. The respondent No.2 submitted written complaint to the Commissioner of Police, CBD Belapur, Navi Mumbai, it is also annexed to the affidavit in reply. The respondent No.1 has not committed any act

amounting to defamation of petitioner/complainant. The officials of bank has acted in terms of powers delegated to them. The petitioner has improved his case by additional facts as compared to complaint before Court.

9. In the affidavit in rejoinder filed by petitioner, there is denial of the contents of reply filed by the respondent. It is stated that the complaint filed by respondent No.2 was of sexual harassment. Since, the narration of complaint under preview of sexual harassment at work place, no action was initiated against the petitioner. The respondent No.1 has abused his power to impress the respondent No.2 and took action against the petitioner. The act of respondents have caused and defamed his reputation. The respondent No.1 has given false statement to this Court that ISD has forwarded complaint to ATM Department while evidence on record show that the complaint was given to respondent No.1 on 01.11.2018 at 06:20 pm. The action was initiated within a few minutes after receipt of complaint of respondent No.2. The respondent No.2 has falsely stated

that the complaint of Respondent No.2 was forwarded to ATM Department while evidence on record i.e. e-mail dated 02.11.2018 which was sent from ATM Department to the petitioner's reporting manager indicate that complaint against the petitioner is not yet known to him. However, ATM I & S Department ordering the petitioner's reporting manager to remove the petitioner from GITC immediately. The respondent No.2 had not contradictory version in her statement in the complaint filed by respondent No.2 to respondent No.1. In the complaint filed by respondent No.2 it was mentioned that the petitioner had taken her contact number from somewhere as she is not aware from where the petitioner had taken her contact number. In the rejoinder, the petitioner has reiterated that action initiated by accused was defamatory. It is contended that the version of respondent No.1 and 2 is contradictory and false. There is high endlessness part of accused.

10. From the documents on record it is apparent that the petitioner had filed private complaint alleging aforesaid

offences. The learned Magistrate issued process. The order of process though refers to the report under Section 202 of Cr.P.C. does not mention as to why the said report is not taken into consideration by the Court. Before issuing process, learned Magistrate has apparently directed inquiry under Section 202 of Cr.P.C. Report dated 01.10.2019 submitted by the concerned Police Station to the Court has been annexed to this petition. From the report it appears that the police conducted inquiry and statements of concerned person were recorded including the complainant and accused. The report clearly indicate that the version of the complainant creates doubt. Documents were submitted during inquiry. The report does not support the grievance of the complainant. The learned Sessions Judge in the impugned order dated 25.02.2021 has taken into consideration the material on record as well as report submitted by the police under Section 202 of Cr.P.C. The learned Sessions Judge had observed that API Mr. Rokade reported that the allegations made by complainant were

contradictory. He was never removed from services. It was never reported by State Bank of India to AGM Company wherein complainant was employed that he should be dismissed from the services. The company was regularly paying his salary. The complainant had made complaint applications to the police and was advised to approach Labour Court. However, he again approached the Court. The report filed by police was negative. Despite negative report, the Court issued process. There is no whisper in the order of process supporting report of police is neglected and process was issued. In case of disagreement with the report, the learned Magistrate was under obligation to make observations as to why the report is not relied upon and on what basis she came to conclusion that the offence are made out against the accused. The order of process is without application of mind. From the statement it was clear that his behaviour with co-worker was not proper. In view of his conduct, the female employee made complaint and the accused on behalf of State Bank of India had

requested the employer of the petitioner that he should not be sent in the office of State Bank of India. The action of respondent No.1 on the complaint of respondent No.2 was proper and legal. It was further observed that the statement of complainant himself indicate that the allegations made by respondent No.2 against him appears to be true and correct. Although the Revision Application was preferred by the respondent No.1, the complaint was dismissed against both respondents/accused. Considering the factual aspects of this matter, I do not find any infirmity in the order dated 25.02.2021. The learned Sessions Judge has rightly set aside the order of learned Magistrate. The complaints were filed by respondent No.2 against the petitioner it was alleged that the petitioner was harassing her. On perusal of the police report submitted under Section 202 of Cr.P.C. the averment in the complaint, the documents on record, I do not find any illegality in the order process by learned Sessions Judge. No case is made out for issuing process under Section 499 punishable under Section

500 and 501 read with 34 of the Indian Penal Code. It would be abuse of process of law to continue such proceedings against the respondent Nos.1 and 2. Hence, no interference is called for in the impugned order.

ORDER

Criminal Writ Petition No.2291 of 2021 is rejected and disposed off;

(PRAKASH D. NAIK, J.)