

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.126 OF 2022

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1. Ashok s/o Gopalrao Jadhav,
age 58 yrs, Occ. Retired,
(Divisional Controller) MSRTC,
R/o Flat No.E/302, Amar Court Yard,
S.No.266/1, 3rd Floor, Hadapsar, Pune
2. Suresh s/o Tukaram Sanvatsarkar,
age 60 yrs, Occ. Retired,
(Divisional Controller) MSRTC,
R/o Rangar Galli, Sangamner, Dist.
Ahmednagar.
3. Shivaji s/o Thakaji Bhoir,
age 60 yrs, Occ. Retired,
(Divisional Traffic officer),
MSRTC, R/o Kranti Nagar, Pimple
Gaurav, Pune.
4. Manisha Ramchandra Bhondave,
age 25 yrs, Occ. Service,
R/o MSRTC Depot, Shrigonda,
Dist. Ahmednagar. Petitioners.

Versus

1. The State of Maharashtra,
2. Sahebrao s/o Govindrao Chaudhari,
age 73 yrs, Occ. Now Legal profession,
R/o. Vaghaskar Galli, Bhingar,
Ahmednagar. Respondents.

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Mr. M.K. Goyanka Advocate for petitioners.
Mrs. P. V. Diggikar, APP for respondent no.1 State.
Mr. D.R. Jaybhar Advocate for respondent No.2.

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CORAM : S.G. CHAPALGAONKAR, J.

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RESERVED ON : 10th October, 2023.
PRONOUNCED ON : 25th October, 2023.
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ORDER :-

1. The petitioners/original accused impugns the order dated 4.12.2021 passed by the learned Sessions Judge, Ahmednagar in criminal revision no.121 of 2017 as well as the order dated 2.5.2027 passed by the JMFC-1 below Exhibit-1 in SCC No.2195 of 2017 thereby issuing process against the petitioners for the offenses punishable u/s 500 of the IPC.

2. The respondent no.2/original complainant instituted a private complaint before the J.M.F.C. at Ahmednagar bearing Criminal complaint no.580 of 2016. In nutshell, it is alleged that the complainant is a practicing Advocate at Ahmednagar. Prior to entering into law practice, he was an employee of MSRTC and served as such during the period from 1967 to 2004. He lead employees union and participated in negotiations with the MSRTC. It is the case of complainant that on 24.9.2013 he boarded in MSRTC Bus from Kolhar. Accused no.3 was Conductor in charge of the bus. The complainant took a seat abutting to the entry gate of the bus. He handover currency notes of Rs. 30 and received a ticket. Although, the actual fare was R.29/-, accused no.3, failed to return balance Rupee One nor had she made deposit in the account of the MSRTC.

3. The complainant approached the Consumer Forum by making a Consumer Complaint against MSRTC and claimed compensation for deficiency of service. In reply filed by MSRTC, defamatory imputations unconcern with subject matter were incorporated against complainant. Hence complainant had issued a legal notice to concerned officers pointing out defamatory and irrelevant imputations.. However, instead of taking appropriate action accused officers of MSRTC vide reply dated 28.7.2016 issued through advocate Kalyan Pagar and reply dated 1.4.2016 issued through advocate Babasaheb Wagh. The contents thereof are defamatory causing mental torture and loss of reputation to the complainant. He alleges that because of such irresponsible reply to the notice, the applicant suffered loss of reputation. The complainant further alleges that the accused nos.1 to 3 have also filed written statement/say to his consumer complaint filed before the Consumer Disputes Redressal Forum containing false and irrelevant facts pertaining to his service tenure with MSRTC. It is, therefore, alleged that the accused persons have committed offence under section 199, 200, 463, 469, 499, 191, 192, 193, 500 r/w 34 of the IPC.

4. The applicant recorded his verification statement dated 31.8.2016 wherein he states that the respondent/accused have published defamatory statement by way of reply given to consumer complaint before District Forum so also they have replied his legal notice dated 22.12.2015 through the reply

dated 1.3.2016 which contains defamatory statements against him.

5. The learned J.M.F.C., Ahmednagar on perusal of the complaint and verification statement of the complainant pleased to pass issue process order dated 2.5.2017 against accused persons for the offence p/u/s 199, 500 of the IPC. The order issuing the process against the accused was challenged by accused no. 1 and 2 in revision before the Sessions Judge, Ahmednagar. The petitioner nos.3 and 4 / original accused were made as respondents in the revision application. The Sessions Judge after considering the rival submissions partly allowed the revision application vide order dated 4.12.2021 and quashed and set aside the impugned order to the extent of offence punishable u/s 199 of the IPC. However, confirmed the order issuing process to the extent of section 500 of the IPC.

6. Mr. Goyanka, learned advocate appearing for the petitioners would submit that the allegations made in complaint are not sufficient to make out any offence punishable u/s 500 of the IPC. He would submit that the statement made in the reply notice as well as reply submitted before the Consumer Forum on behalf of petitioners is based on office record. He would submit that the reply notice addressed to complainant or say filed before the Consumer Forum does not constitute publication, which is primary requirement for making out any offence under section 499 of the IPC. He would submit that the Trial court as well as Revisional Court failed to consider the material on record in its proper

perspective so also ingredients of section 499 of the IPC while issuing process against the petitioners.

7. Mr. Jaybhar, learned advocate appearing for the original complainant submits that the imputations made on the character of the complainant were with ulterior motive to defame him and cause mental torture. He would submit that the subject matter before the Consumer Forum has no relation with the service tenure of complainant with the MSRTC. When the complainant was traveling as a passenger in MSRTC bus, he faced embarrassment because of rude behavior of the lady bus conductor. Further, she failed to refund excess amount received after deducting the amount of fare. Subject matter of the complaint was deficiency of service by conductor or MSRTC towards complainant in his capacity as passenger. However, respondents in their reply posted through advocate incorporated defamatory statements pertaining to discharge of official duties by the complainant while in service with MSRTC. He would further submit that defence of the petitioners that statements in complaint are true or based on the official record will have to be established by accused during the course of trial by way of defence against action initiated by the complainant. He would therefore urge to reject the writ petition.

8. Perusal of the complaint instituted by the respondent no.2 before the Magistrate refers to two documents containing defamatory imputations. Firstly, the written statement submitted by the MSRTC in consumer complaint no.79 of 2014 and reply dated 1.3.2016 sent by the MSRTC to

the legal notice dated 22.12.2015 issued by the complainant. According to the complainant, statements contained in both the documents are defamatory in nature and malafide. Pertinently, the imputations which according to the complainant are defamatory in character are not specifically refereed in the complaint. In fact, in absence of reference of imputations in the complaint or verification of the complainant, the process could not have been issued against the applicants. If the complainant wished Court to rely on the contents of the complaint and issue the process for alleged offence, it was for the complainant to refer the particular defamatory statements in his complaint so also in verification statement recorded before the Magistrate.

9. Perusal of the order dated 2.5.2017 issuing process against the petitioners depicts that there is no application of mind as regards imputations from the document which are alleged to be defamatory. Although Learned Sessions Judge rightly set aside the order issuing process under section 199 of the IPC, erroneously maintained the same to the extent of offence u/s 500 of the IPC in absence of reference in complaint as regards to defamatory statements relied upon by the complainant.

10. Mr. Goyanka, learned counsel appearing for the petitioners relied upon the judgment of Kerala High Court in the matter of **Ch. Kader and another Vs. Munilakhath Fousia reported in 1990 Cr.L.J. 2356** to contend that reply to the legal notice issued through advocate does not amount to publication.

The Kerala High Court took a view that sending of communication to an advocate on behalf of his client is virtually communication made to the client himself. As such, there is no publication of imputation concerning client. Reply notice sent by counsel representing the petitioners to the complainant or his counsel can never be taken as publication of imputation concerning the complainant because that communication was to the complainant. In the present case, although reply notice was given on behalf of MSRTC to the petitioners, it was addressed to him directly. There is nothing to infer that the contents of this reply were made public or imputation therein were exposed to public at large. The complainant nowhere pleads how the defamatory statements in reply were published.

11. So far as the reply filed in consumer complaint no.79 of 2014 before the District Forum is concerned, there is denial of contents of the complaint with statement referring complainant as eccentric and adamant. Those statements per se cannot be interpreted as defamatory or even unconcern with nature of dispute.

12. Mr. Jaybhar, learned advocate appearing for the respondent complainant relies upon the judgment of this Court in the case of **Smt. Madhuri Mukund Chitnis Vs. Mukund Martand Chitnis and another** reported in 1990 Cri.L.J 2084 to contend that if irrelevant imputations are made in the reply that would constitute defamation within the meaning of section 499 of the IPC. However, looking to the contents of the reply

filed by the MSRTC before the Consumer Forum, it can be observed that reply was not given by the petitioners in their personal capacity. Further, except the comment regarding eccentric behaviour of the applicant during his service career to relate his conduct in the incident which is subject matter of the complaint, no other statement appears to have been made so as to constitute any offence u/s 499 of the IPC. So far as the reply to the legal notice is concerned, it can be observed that it is issued by advocate Mr. Babasaheb Wagh on the instructions of officers of MSRTC. Reply is directly addressed to the complainant. There is nothing to infer about publication. In that view of the matter, no offence under section 499 of the IPC would attract against the accused. Although applicants 3 and 4 had not approached sessions court there is no statutory impediment in entertaining their case alongwith applicants No. 1 and 2 since entire complaint is based on common allegations against all accused persons. This court has ample powers to directly entertain revision u/s 397, 401 R/W section 482 of Cr.P.C. In that view of the matter, writ petition deserves to be allowed. Hence, order.

ORDER

- i. The Writ Petition is allowed.
- ii. The order dated 2.5.2017 passed below exhibit-1 in SCC No.2195 of 2017 pending before the Judicial Magistrate First Class, at Ahmednagar as well as the order dated 4.12.2021 passed by the Additional Sessions Judge, Ahmednagar in

Criminal Revision No.121 of 2017 is hereby quashed and set aside.

- iii. Complaint in SCC No.2195 of 2017 is hereby dismissed.
- iv. Writ Petition accordingly disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

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