

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

**WRIT PETITION NO.10344 OF 2021**

Premjeet S/o Indalchand Rajput

.... Petitioner

Versus

1. Smt. Vaishali Shivaji Tour

2. Mr. Vivek Shivaji Tour

.... Respondents

.....

Mr. Rameshwar F. Totala, Advocate for the Petitioner

Mr. V.D. Sapkal, Senior Advocate i/b. Mr. S.R. Sapkal, Advocate  
for Respondents

.....

**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 20<sup>th</sup> JUNE, 2023**

**ORDER :**

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner challenges the common order passed by the learned 5<sup>th</sup> Joint Civil Judge, Senior Division, Aurangabad, below Exhibits 13 and 16 in Special Civil Suit No.281 of 2018.

2. Admitted facts as appearing from the record are that, the petitioner/plaintiff filed Special Civil Suit No.281 of 2018, seeking compensation of Rs.50,00,000/- from the respondents/defendant Nos. 1 and 2 claiming that in order to avoid payment of society dues, and in order to pressurize the petitioner/plaintiff, a false complaint is filed by the

respondents/defendant Nos.1 and 2 against the petitioner/plaintiff. Respondents/defendant Nos. 1 and 2 in collusion and with an intention to lower down the image of the petitioner/plaintiff in the society, family and friends, filed a false complaint against the petitioner/plaintiff at Satara Police Station, alleging that on 1<sup>st</sup> January, 2018 at about 6.30 p.m. she came from city towards her house by car No. MH-20 BC/3475 belonging to her brother. It is alleged that on the gate of the society guard restrained her stating that applicant has instructed him not to allow her car in the society, she entered in the society along with other car. It is further alleged that when she reached home, applicant entered in her house abused her and by catching her hand with bad intention, beaten her and said that she will require to make the payment of maintenance of society. On the basis of said information, Crime No. 5 of 2018 is registered against the petitioner/plaintiff under Sections 323, 354, 452, 504 and 506 of the Indian Penal Code, 1860.

3. Pursuant to summons , the defendants appeared and filed application Exhibit-13 under Order VII Rule 1 read with Section 151 of the Code of Civil Procedure for rejection of plaint as it does not show any cause of action.

4. The petitioner/plaintiff filed application Exhibit-16 under Order VI Rule 17 of the Code of Civil Procedure, seeking amendment in the plaint. The amendment proposed by the petitioner/plaintiff is in respect of news item published in local newspaper, which according to the petitioner/plaintiff was at the instance of respondents/defendant Nos. 1 and 2. It is further claimed that respondents/defendant Nos. 1 and 2 personally distributed the newspaper dated 03/01/2018 in which an article is published in respect of registration of offence against the petitioner/plaintiff, the same shows clear intention to defame the petitioner/plaintiff in the eyes of friends, relatives and colleagues. After the news item was published, two colleagues talked with the petitioner/plaintiff in teasing manner and told him that they had read the newspaper and got the knowledge of his activities. By common order, application Exhibit-13 filed by the respondents/defendant Nos. 1 and 2 is allowed and the application Exhibit-16 is rejected. The petitioner is aggrieved by this order.

5. Heard the learned advocate for the petitioner and the learned senior advocate for the respondent. Perused the memo of writ petition, annexures thereto, affidavit-in-reply

filed by the respondents, impugned order and the citations relied upon by the learned advocate for the petitioner and the learned senior advocate for the respondents.

6. It is not in dispute that the petitioner/plaintiff has filed suit for defamation, claiming that the cause of action to file the suit arose on 01/01/2018, when a false complaint is filed by defendant No. 1 against the petitioner/plaintiff, and in order to blackmail the petitioner/plaintiff, the respondents/defendant Nos. 1 and 2 are trying to create pressure by giving threats to the petitioner/plaintiff that they will file more complaints against him. Perusal of the news item published in the local newspaper, which is placed on record reveals that the said news item is published on the basis of the complaint given by defendant No.1 to the Satara Police Station. By no stretch of imagination, it can be said that the same is at the instance of the respondents/defendant Nos.1 and 2.

7. Learned Trial Court, while allowing application Exhibit-13 held that mere filing of the complaint will not give the cause of action to the plaintiff for filing suit for damages, and hence, on the basis of available pleadings, the plaint is liable to be rejected for want of cause of action. The said

finding recorded by the Trial Court is supported by the decision in case of *Ram Singh Batra Vs. Sharan Premi, 2006 SCC OnLine Del 940*, wherein in identical facts, it is held:

"13. Suffice would it be to note that the process of criminal law is still on. Plaintiff has not been acquitted or discharged.

14. Law is clear. Malicious prosecution is actionable as a tort. But, ingredients to be proved by the plaintiff in an action for malicious prosecution are:-

(i) that plaintiff was prosecuted at the instance of the defendant; (ii) that the prosecution terminated in favour of the plaintiff; (iii) that the prosecution was malicious; and (iv) that it was without reasonable and probable cause.

15. In the report published as AIR 1947 PC 108, *Mohamed Amin Vs. Jogendra Kumar Bannerjee*, in para 17 it is observed;

"17. From this consideration of the nature of an action for damages for malicious prosecution emerges the answer to the problem before the Board. To found an action for damages for malicious prosecution based upon criminal proceedings the test is not whether the criminal proceedings may be correctly described as a prosecution; the test is whether such proceedings have reached a stage at which damage to the plaintiff results. Their Lordships are not prepared to go as far as some of the Courts in India in saying that the mere presentation of a false complaint which first seeks to set the criminal law in motion will per se

*found an action for damages for malicious prosecution."*

17. A perusal of the plaint shows that principal grievance of the plaintiff is a false complaint resulting in registration of FIR No.107/2001 and plaintiff's arrest pending investigation. This is evident from plaintiff's averments in para 19 where he states that when he was sent to judicial custody, he suffered humiliation, embarrassment, insult and inhuman treatment. He was given sub-standard food whereas he was used to live a life of comfort and luxury. That he became so weak and sick that he had to be helped by 2 persons when he came out of the jail on 27.5.2004.

18. I have no hesitation in holding that as of today no cause of action has accrued to the plaintiff to file a suit against the defendant on the tort of malicious prosecution for the reason plaintiff has yet to obtain, if at all, acquittal in his favour or a discharge. One ingredient to be established has yet to be born.

23. The said newspaper reports have referred to registration of the case against the plaintiff and his arrest. They did not contain any defamatory statements about the plaintiff made by the defendant. As pleaded by the plaintiff, the newspaper reports merely report a statement of fact being that an FIR stands registered against the plaintiff and that he stands arrested. The newspaper reports disclose the nature of offence alleged against the plaintiff.

24. A statement published, unless it is defamatory per-se, is actionable on proof of that it is false and is defamatory. Further, a complaint to a lawful authority is not actionable

*if it is not defamatory per-se unless it is established that the complaint is false and is defamatory. As a consequence, a newspaper report pertaining to a complaint made to a lawful authority cannot be actionable unless the allegations are of a kind that a case of defamation per-se is made out. Thus, till before the Curt of Law it is not established that the FIR in question is based on a false allegation, no action is even maintainable on the newspaper report.*

*25. Be that as it may, case is principally based on the tort of malicious prosecution evidenced by the fact that while invoking Order 7 Rule 11 of CPC, defendant has categorically stated that since investigation is still on, plaint does not disclose a cause of action. In response, plaintiff has stated that the result of investigation discloses no offence being committed. Plaintiff has not stated anywhere that the plaint is based primarily on the newspaper reports which have defamed him. I allow the application and dismiss the plaint as not disclosing a cause of action. I hold that action is premature. CS(OS) No.1289/2004 in view of the order disposing of IA. No.3184/2005, the suit is dismissed. No costs."*

8. In the case in hand, admittedly, the complaint lodged by defendant No.1 is under investigation and yet to reach its logical conclusion. The said proceeding is yet to reach the stage at which damage to the petitioner/plaintiff results. Mere presentation of a complaint, which sets criminal law in motion does not amount to defamation. Therefore, as of today, no

cause of action is accrued to the petitioner/plaintiff to file a suit against the respondents/defendant Nos. 1 and 2 on the ground of malicious prosecution. If the petitioner/plaintiff acquitted or discharged, he may have cause of action.

9. Merely because a news of registration of crime against the petitioner/plaintiff is published, that by itself does not make out a case of defamation. The Trial Court has passed a reasoned order, which is in consonance with the aforestated legal position.

10. Record further indicates that private complaint filed by the petitioner under Section 499 and 500 of the Indian Penal Code bearing criminal complaint No.10174 of 2018 is dismissed by the Trial Court under Section 203 of the Code of Criminal Procedure, holding that there is no sufficient ground for proceeding.

11. Learned advocate for the petitioner, by relying on Division Bench judgment of this Court in ***Gangamal Ramchand Vs. The Hongkong and Shanghai Banking Corporation, AIR 1950 BOMBAY 345*** and ***Mohinder Kumar Mehra Vs. Roop Rani Mehra and Ors., (2018) 2 SCC 132,***

vehemently urged that even if the plaint was liable to be rejected, still the Trial Court ought to have allowed the application for amendment filed by the petitioner.

12. In ***Gangamal Ramchand*** (supra), the Division Bench held that, *"It is perfectly true that it is incumbent upon the Court to reject a plaint that does not disclose a cause of action but it does not follow that it is not open to the Court to allow a plaint to be amended as that it should disclose a cause of action."*

13. In the case in hand, on perusal of the proposed amendment, in my opinion, even the same does not disclose a cause of action, as contemplated in the above ruling.

14. In ***Mohinder Kumar Mehra*** (supra), it is held that the amendment of pleadings should be allowed even after the commencement of Trial. There cannot be any two opinions about the said ratio, however, in the peculiar facts of the present case, this ruling does not further the case of the petitioner.

15. In view of the aforesaid reasons, no fault is found with the approach of the learned Trial Court in passing the impugned order. There is no illegality or perversity in the order

impugned in the present petition. Writ Petition being devoid of merit is dismissed.

**[ NITIN B. SURYAWANSHI ]**  
**JUDGE**

S.P. Rane