

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

41 CRIMINAL APPLICATION NO. 3145 OF 2022

AFZAL KHAN S/O IQBAL KHAN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicants : Mr. Shaikh Tarek Mobin H.
APP for Respondent – State : Mr. P. V. Diggikar
Advocate for Respondent No. 2 : Mr. K. N. Shaikh
...

CORAM : KISHORE C. SANT, J.

DATE : 25.04.2023

PER COURT :

01. Heard. Taken up for final disposal at the stage of admission by consent of the parties.

02. This application is filed by the accused persons against the order of issuance of process dated 02.08.2022 passed by the learned Judicial Magistrate First Class, Court No.3, Aurangabad for the offences punishable under Sections 500 read with Section 34 of the Indian Penal Code against the accused in this application.

03. The applicants by way of this application prayed for quashing and setting aside the impugned order. So also to quash the proceedings of S.C.C.No.1171/22 from rival group filed a Scheme Application before the Wakf Board. The said proceeding was opposed

by the accused persons by filing objection. In the objection in paragraph No.4 statement is made against the present respondent Nos. 3 and 4, who happened to be brother of one of the applicants before the Wakf Board. The statement reads as :

“ it is further submitted that the applicant No. 11 in the scheme is the brother of Quari Shakeel Ahmed who is encroacher of the same wakf institution having illegal possession over the area adm. 15 X 81 and at present he is residing their only. Further applicant No.1 is a close relative of applicant No.4 and 5, further the applicant no. 6 is not resident of Juna Bazar.”

Said Scheme Application Exhibit 'C' came to be rejected by order dated 07.02.2022. Thereafter applicants circulated the judgment and order and copies of some of the record of proceedings on Whatsapp group namely 'Maktab Ek Khana'. Respondent No. 2, therefore, filed a complaint against the present applicants for the offence punishable under Section 506 of the Indian Penal Code. After complaint came to be filed, the learned Magistrate recorded a verification under Section 200 of Cr.P.C. In verification statement, the complainant stated that in the objection submitted for the Wakf the accused persons had made a specific allegation against complainant that he has encroached upon the land of Masjid. He further stated that because of this message was widely circulated on various Whatsapp group, the

complainant received many messages and phone calls caused embarrassment. The complainant stated that therefore, he submitted that his image in the society was maligned and he faced defamation. On recording the verification statement, the learned trial Court passed the order directing a case to be registered as summary criminal case and issued process against accused for the offence punishable under Section 500 read with Section 34 of the Indian Penal Code. It is this order against which, the accused /applicants have approached this Court.

04. The learned Advocate for the applicants submits that the objection was filed on 02.07.2021, order was passed on the same application on 07.02.2022 whereas complaint came to be filed on 16.04.2018 i.e. after about two months. He submits that there was no material before the Magistrate to come to conclusion that offence is made out, in the Whatsapp message there was no reference to the encroachment by the complainant. On the Whatsapp group, the only order passed by the Wakf Board was circulated. However, no word as encroacher has been used as against the complainant. He further submits that as a matter of fact, the respondent has made an encroachment for the land of Masjid and they have even started proceedings for removal of encroachment.

05. The learned Advocate for the applicants relies upon following judgment's :

- (1) *Amit Sibal Vs. Arvind Kejriwal and others*, (2018) 12 SCC 165,
- (2) *Indrajit Lankesh Vs. K. T. Dhanu Kumar*, (2015) 4 SCC 598,
- (3) *Dr. Dhanwanti Vaswani Vs. State and another*, 1991 Supp (2) SCC 329,
- (4) *Arun Kumar Todi and others Vs. The State of West Bengal and another*, 2016 SCC OnLine Cal.554,
- (5) *Lalankumar Sing & Ors. Vs. State of Maharashtra*, 2022 SCC Online SC 1383
- (6) *M. Suresh & Ors. Vs. State and another*, (2018) 15 SCC 273
- (7) *Rajib Ranjan Vs. R. Vijaykumar* (2015) 1 SCC 513 = MANU/SC0945/2014
- (8) *Joseph Salvaraj A. Vs. State of Gujarat & Ors.*, (2011) 7 SCC 59
- (9) *Asmathunnisa Vs. State of Andhra Pradesh & Anr.* (2011) 11 SCC 259
- (10) *Ramesh Karale Vs. State of Maharashtra & Anr. Criminal Application No. 2810/2021, dtd.20.10.2022.*

06. While opposing the application, learned Advocate for the respondent submitted that respondent spoiled reputation in the community of 'Quari' i.e. 'Preacher'. Respondent is not concerned with the affairs of the trust/wakf, still he is dragged into litigation.

The respondent has no concern with any of the accused and still his name is mentioned as encroacher. In support of the order, he submits that the Magistrate has rightly applied his mind to the facts of this case and has also rightly followed the procedure. It is only after recording of the verification, the order of issuance of process came to be passed and therefore same need not be disturbed and prays for rejection of application.

07. The learned Advocate for the respondents relies upon following judgment's :

(1) *Maroti and another Vs. Ramkrushna and others, 2021, SCC OnLine Bom. 2184*

(2) *Chaman Lal Vs. State of Punjab, LAW (SC) -1970 -3 -31*

08. Learned APP also supports the order. She submits that from the order, it is seen, that the learned Judge has rightly applied his mind to the facts of the case and prays for rejection of the application.

09. On going through the judgments, this Court finds that the judgment in the case of *Lalankumar Sing (supra)*, is on the point of application of mind, the main question that was put and answered in the case of Lalankumar is about a vicarious liability of the directors of the company. The reference in the said judgment is made to show that the Magistrate has to apply his mind while passing the order of

issuance of process and the same is to be reflected in the order.

10. In the case of *M. Suresh (supra)*, it was a case wherein a civil dispute was going on if criminal case is made and in that case the proceeding were quashed. In the case of *Rajib Ranjan (supra)*, the Honourable Apex Court quashed the complaint holding that the allegation of fabricating of records etc. was made after thought. Therefore, the act was done by the accused persons in discharge of their official duties and in that situation, the proceeding were quashed. Though learned Advocate has submitted that a specific question was raised in this application as to whether the facts of this case, the complaint filed was malafide and after thought, after losing the battle/ matter in civil litigation and about amounts to misuse and abuse of law. This Court finds that in the facts of this case, the said observation may not be helpful to the applicants herein.

11. In the case of *Joseph (supra)*, also the Hon'ble Court clearly held that the matter was purely of civil nature. It was under section 420 of the Indian Penal Code, the Hon'ble Court had found that there was no cheating or dishonest inducement for the delivery of property or breach of trust by the accused.

12. In the case of ***Asmathunnisa (supra)***, the Hon'ble Court has discussed that the High Court has inherent power and stated the manner in which it is to be used. It is held that the powers under Section 482, be used to prevent abuse of process of law, It was observed that the facts even if accepted in their entirety, if do not disclose ingredients, then it is for the High Court to ensure that such several prosecutions are quashed.

13. In the case of ***Ramesh Karale (supra)***, the Judicial Magistrate First Class had concluded that the applicants therein were impleaded with malafide intention and just to harass them. Hence, in that case the application was allowed and the FIR was quashed.

14. The learned Advocate for petitioners also relied upon the judgments in the cases of ***Amit Sibal (supra)*** which was quashed by the Hon'ble Apex Court. In the case of ***Indrajeet Lankesh (supra)***, the Hon'ble Apex Court held that the High Court committed error in dismissing petition under section 482 of the Cr.P.C. by discussing the case was in respect of an editor and in the facts of that case a judgment of the High Court was quashed. In the case of ***Dr. Dhanwanti Vaswani (supra)***, the judgment was delivered on the facts of the case. Even in the case of ***Arun Kumar (supra)***, the judgment

was on the facts of the case.

15. The learned Advocate for the respondent relied upon the judgment decided by this Court reported in *2021 SCC Online, Bombay 2184* in the case of *Maruti and another vs. Ramkrushna and another*, this Court by considering the nature was pleased to hold that the process was rightly issued. The facts are almost similar to the facts of this case. In that case, certain statements were made in the proceedings before the Sub-Divisional Officer in respect of the rights of the parties.

16. In the case of *Chamanlal (supra)*, the Hon'ble Apex Court again in the case of defamation, held that the process was rightly issued. It is further held that this is not a case where there should be a reduction of sentence particularly when the Courts have found facts which dispel any semblance of good faith and dismissed the appeal.

17. Considering all these judgments, this Court finds that in this case undisputedly present applicants had filed objection, containing a defamatory statement naming respondent to be an encroacher. The respondent happens to be a Quarri i.e. a Preacher and being 'Quari' he enjoys respect in the society, therefore, he lost his self respect in

the community. Further, it needs to be considered that he was not a party to the proceeding before the Wakf Board where allegations were made. Looking to the order passed by the Magistrate, it is seen that the Magistrate has personally seen the copy of the Whatsapp messages circulated on the Whatsapp group. When the Magistrate has personally looked into the material and was satisfied about sufficiency of the material, in such case order need not be faulted.

18. Considering all these points and the material on record, this Court finds that the learned Magistrate has not committed any error in passing the impugned order. The present application is, therefore, without merit and the same is accordingly dismissed.

(KISHORE C. SANT, J.)

shp/-