

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

CRIMINAL APPLICATION NO. 4277 OF 2022

**BABAN S/O. YASHWANT DESHMUKH & OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.A.N. Nagargoje, Advocate for the applicants.

Mr.P.N. Kutti, APP for the respondent/State.

Mr.N.D. Sonawane, Advocate for respondent No.2.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	17.04.2023
PRONOUNCED ON	:	09.06.2023

ORDER :-

01. Present application is filed by the original accused in SCC No.1393 of 2022 pending in the Court of learned JMFC, Sangamner for quashing and setting aside the proceedings of the same. The said complaint is filed by respondent No.2 for the offences punishable under sections 500, 504, 506 read with section 34 of the Indian Penal Code.

02. The facts in short are that respondent No.2 and the applicants are related to each other. There are litigations pending between the parties. The applicants purchased a land adjoining the land of the respondent No.2. On that it is alleged that respondent No.2 got annoyed and started troubling the

applicants. The applicants were constrained to make various representations to various authorities. It is allegation of respondent No.2 that because of such representations his image in the society is defamed and therefore he has filed a complaint in the Court. In the said case, the learned Magistrate issued process against the applicants for the offences punishable under sections 500, 504, 506 read with section 34 of the Indian Penal Code. The applicants are, therefore, before this Court for quashing of the proceedings.

03. The complainant purchased a land bearing Gat No.357. This land falls in between the lands of the complainant and the accused. The complainant owns land Gat no.358 and accused owns land Gat No.356. Accused No.1 and his three brothers have share in the property Gat No.356. Out of these brothers heirs of deceased brother Rajendra and Dattatray sold the land to complainant. It is alleged that the accused persons, therefore, on 23.05.2017 picked up quarrel with the informant and threatened him with dire consequences. They also demanded some amount and if no amount is paid, they threatened that they will defame the informant in the society. Respondent No.2 – complainant was Sarpanch for period from 1995-2000, 2013-2015. He was also a director in Sangamner Agricultural Produce

Transport Company. He also happens to be founder of Namdar Balasaheb Bhausahab Thorat Doodh Sanstha, Jakhuri and from 2015 and is presently a member of the Grampanchayat.

04. The learned Magistrate recorded verification. On recording the verification, the learned Magistrate called for a report under section 202 of the Cr.P.C. The police filed report submitting that offence under section 500 read with section 34 is made out. In the report it is further stated that it transpired during the inquiry that the accused persons by bringing pressure upon the officers and the revenue authorities, made allegations with a view to defame the complainant.

05. The learned Magistrate on considering the verification and the report by the police, directed to re-register case as Summary Criminal Case for hearing and trial and issued process against the accused persons for the offence punishable under sections 500, 504, 506 read with section 34 of the IPC. It is this order and the proceeding against which the applicant has approached this Court.

06. The learned Advocate for the applicants submits that there are various proceedings pending between the parties. A Civil Suit which was filed in 2004 for partition between the applicant and the complainant came to be dismissed. RCS No.29 of 2018 is filed by respondent No.2 for specific performance, however, same was compromised. One Special Civil Suit is also pending bearing No.60 of 2018. There is also a dispute in respect of mutation entry taken in favour of respondent No.2, bearing Mutation Entry No. 2532 and 2516. That order was carried in the appeal before the learned SDO and same came to be allowed on 23.06.2022, against which revision is pending. There is one more mutation entry No.1989 that is already challenged by one Sushila Deshmukh - wife of respondent No.2, against which a representation is pending. Said proceeding is contested by respondent No.2 as general power of attorney holder of Sushila.

07. The learned Advocate for the applicants submits that reading the complaint as it is, no offence is made out. Proceeding with the trial would clearly be an abuse of process of law, as the same is initiated with ulterior motive. Making the complaints before the authorities cannot be said to be a defamation. The alleged communications are in the nature complaint made to

the respective authorities. It can hardly be said to be a material published to defame the accused. There is no publication of any material as such. He further submits that in-fact the learned Trial Judge has also come to a conclusion that no offence is made out under section 500 of the IPC and has still issued process under section 500, 504 and 506 of the IPC. This clearly shows non application of mind. The facts also do not make out a case under section 504 and 506 of the IPC. The various proceedings pending between the parties show that the parties are proceeding with their genuine grievances in the Court and this fact is not denied by any of the parties. The order is also challenged for non-observance of mandatory procedure under section 202 of the Cr.P.C. He submits that in view of judgment in the case of **Priyanka Srivastava & Anr. Vs. State of U.P. & Ors., reported in (2015) 6 SCC 287**, it was necessary for the complainant to file an affidavit containing allegations making out case for passing the order and prays for allowing application. He submits that, there is no averment that the complainant had approached the police station and thereafter had approached the Superintendent of Police. In absence of such averment in the complaint, the complaint could not have been entertained.

08. The learned Advocate for the respondent submits that from reading of the complaint it is seen that clearly offences are made out against the applicants. The allegations show that it is in respect of the things which are not relevant to the decision of any of the disputes. The complaint sent to the Chief Minister or to other authorities where no dispute is pending would clearly amount to defamation. He submits that from the order dated 19.03.2022, it is clear that the Magistrate had called for report under section 202 of the Cr.P.C. As regards filing of the complaint he submits that thrice the complaints were made to police station on 24.05.2017, 16.01.2018 and 27.01.2018 and it is only thereafter the complaint is filed. Merely because litigation is pending is no justification for making outrageous allegations. He relies on the judgment reported in 2019(2) Mh.L.J (Cri) 192 in the case of X Vs. Y. He also relied upon judgment reported in 2021 DGLS (Ker) 129 in the case of Joy Anto (Dr) Vs. C.R. Jaison & Anr.

09. So far as judgments relied by the respondents are concerned, in the case of X Vs. Y (Supra), it was a case wherein wife had called husband an impotent in her pleading before the Court and therefore complaint was filed by the husband for defamation and also for offence under section 506 of the

IPC. This Court in the facts held that clearly a case of defamation is made out and dismissed the application filed for quashing of the said case. In the case of Joy Anto (Dr.) (Supra) the Kerala High Court considered the ingredients of section 499 of the IPC and held in the facts of the case that offence was made out. In that case the publication of imputation was made to a person. In that case statements made in the counter affidavit filed in the writ petition were said to be defamatory. Defence was taken that making of statement in counter affidavit will not amount to publication and will not call for criminal liability. In that view of the matter, it was held that in that case trial was required as those were matters of evidence.

10. Thus, on going through the submissions of the Advocates and the material on record, this Court finds that the submission that the complainant had not approached the police station is concerned, there is no merit in the submission, since the offence is under section 500 of the IPC. So far as offences under section 504 and 506 of the IPC are concerned, these are not cognizable offences and therefore it was not necessary for the complainant to approach the police station first. Looking to the material, representation made to the Chief Minister and other authorities, it is clearly seen that the

statements are made which are not concerned with the dispute between the parties and it can be said to be defamatory. Though it appears from the order that the learned Magistrate has wrongly observed that no case is made out under section 500 of the IPC, it appears to be inadvertent mistake as ultimately he has issued process under section 500 of the IPC. Secondly, for the offence under section 504 and 506 of the IPC also this Court finds that the matter requires a trial. The learned Magistrate, has rightly issued summons. This Court finds that in-fact offence of defamation is prima facie made out and therefore the order does not call for interference to that extent. This Court holds that there is no merit in the application and same stands dismissed.

[KISHORE C. SANT, J.]