

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 810 OF 2010

Anant Shankar Jagtap
Age about 58 years, Occ: Advocate,
R/o. Chhatrapati Co-operative
Housing Society, Opp. To Durga Udyan,
Nashik Road, Tal & Dist. Nashik.

.. Petitioner
(Org. Accused)

Vs.

1. Prakash Nivrutti Tajanpure,
Age: about 52 years, Occ: Advocate,
R/o: Tajanpure Mala, Chehdi Pumping
Station Road, Nashik Road, Tal. & Dist. Nashik.

2. The State,
Through the Police Inspector,
Nashik Road Police Station,
Nashik.

.. Respondents

Mr. Harshad M. Inamdar, i/b Ashok S. Pandire a/w. Sahil A Pandire, for the
Petitioner.

Mr. H. J. Dedhia, APP, for the Respondent No.2-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

RESERVED ON : 27th OCTOBER, 2023.

PRONOUNCED ON : 30th NOVEMBER, 2023.

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) The present Petition is filed under Article 227 of the
Constitution of India and under Section 482 of the Code of Criminal

Procedure 1973, seeking to quash and set aside the impugned Order dated 09.02.2010, passed below Exhibit 1, in Criminal Miscellaneous Application No.32 of 2010, whereby the learned Judicial Magistrate First Class, at Nashik Road, District Nashik issued process against the Petitioner for the alleged offences punishable under Sections 500 and 501 of the Indian Penal Code, 1860.

2) Heard Mr. Harshad M. Inamdar, learned Advocate for the Petitioner and Mr. H. J. Dedhia, learned APP for Respondent No.2-State. Perused the Petition and the documents annexed therewith.

3) In the present matter Rule was issued on 1st April, 2010 and the ad-interim relief was granted.

Despite due service, none appears for Respondent No.1 nor Affidavit-in-Reply is filed on her behalf. We have, therefore, with the able assistance of learned APP perused the entire record.

4) Respondent No.1 has filed the said Cril. Misc. Appln. No.32 of 2010 (Exh.A), alleging therein that, the Petitioner and Respondent No.1 were acquainted with each other. Initially, their relations were cordial. But due to happening of certain incidents, more specifically stated in the complaint, their relations spoiled and animosity developed between them. It is stated that, children of Respondent No.1 had purchased some land, situated at village *Chehedi Budruk*, on 09.06.2009. The Petitioner decided to

take disadvantage of the said transaction. So, with the help of opponents of Respondent No.1, the Petitioner published a Public Notice (Exh.B) in a daily '*Lokmat*' on 28.06.2009 containing defamatory material against Respondent No.1, and intentionally defamed him. The Public Notice alleges that, Respondent No.1 has caused registration of a false and bogus Sale Deed of the said land in favour of his children to deny the sale deed of the said land to Smt. Housabai Laxman Tajanpure, who is client of the Petitioner. Hence, Respondent No.1 filed the said Cril. Misc. Appln. No.32 of 2010.

5) In view of the said complaint, the learned Magistrate recorded the verification of Respondent No.1 and passed the impugned order dated 09.02.2010 (Exh.'C'), wherein it is held that, *prima facie*, the complaint reveals that the accusations made in the Public Notice (Exh.B) are defamatory in character for which investigation is necessary. Thus, there is *prima facie* case to issue process against the Petitioner for the offences punishable under Sections 500 and 501 of the Indian Penal Code and directed to issue the process for the same. Hence, the process was issued. But according to the Petitioner, he is innocent. Hence, this Petition.

6) Learned Advocate for the Petitioner submitted that, the allegations made in the complaint itself show that, the same are vindictive and made only with a view to settle personal scours. The said complaint has been filed with a view to seek vengeance against the Petitioner. Even if the

allegations made in the complaint are taken as they are, it does not make out the offences for which the process has been issued. The Public Notice was issued based on the instructions from Smt. Housabai Laxman Tajanpure, who was client of the Petitioner. But Smt. Housabai Laxman Tajanpure has not been made party to the subject Cril. Misc. Appln. No.32 of 2010. As such merely because the said Notice was defamatory against Respondent No.1 as alleged, it cannot form a basis for the complaint. Hence, the said complaint is not sustainable in law. The impugned Order of issue of process is nothing but a gross abuse of the process of law. Therefore, the impugned order and the Criminal Complaint No.32 of 2009 are liable to be quashed and set aside.

7) As against this, the learned APP submitted that, looking at the events stated in the complaint and considering the documents enclosed therewith, undoubtedly, the subject Public Notice is defamatory against Respondent No.1. As such, the impugned Order of issue process is proper in law. Hence, the Petition may be dismissed.

8) Considering the rival submissions, we have carefully considered the Public Notice. This Notice has been published based on one typed Notice, annexed to the petition at Page No.31. This typed notice is bearing thumb impression of the notice sender Smt. Housabai Laxman Tajanpure. From these circumstances it is clear that, first this typed Notice was prepared

by the Petitioner on the instructions and information received from Smt. Housabai Laxman Tajanpure and then it was published in the said daily '*Lokmat*' at her instance and on her behalf and on her instructions. Undisputedly, the Petitioner is an Advocate. There is no material to hold that, the Petitioner alone was instrumental in causing the said notice prepared, typed, approved & signed by Smt. Housabai Laxman Tajanpure and publish it in the daily '*Lokmat*' with an intention to defame Respondent No.1. On the contrary, considering the material as a whole, it can be said that, the Petitioner prepared and published the said notice only in his capacity of an Advocate. Therefore no fault can be found with the Petitioner merely because he has acted as an Advocate and published the said notice based on the information and instructions received from the Smt. Housabai Laxman Tajanpure. It is relevant to note that, Smt. Housabai Laxman Tajanpure is not made party to the Cril. Misc. Appln. No.32 of 2010. Hence, the Petitioner cannot be held responsible for the alleged defamatory material contained in the said Notice and ultimately for the alleged offences under Sections 500 and 501 of the Indian Penal Code, for which the process has been issued against him.

9) In the result, we are of the considered view that, the impugned Order dated 09.02.2010, issuing process under Sections 500 and 501 against the Petitioner and Cril. Misc. Appln. No.32 of 2010 are not sustainable in

law. Hence, the same are liable to be quashed and are accordingly quashed and set aside.

10) Petition is allowed in the aforesaid terms.

11) Rule is made absolute.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)