

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1798 OF 2019

Harish Kumar Garg

... Petitioner

V/s.

The State of Maharashtra and Anr

... Respondents

Mr. Apoorv Singh for the petitioner.

Mr. A.R. Patil, APP for the State.

Dr. Abhinav Chandrachud with Mr. Saurish Shetye i/b

Mr. Abhishek Bhaduri for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : APRIL 25, 2023

P.C.:

1. The petition is directed against the order of issuance of process dated 15th December 2018 passed in Criminal Complaint C.C. No.2379/SW/2018 filed in the Court of Additional Chief Metropolitan Magistrate, 38th Court at Ballard Pier, Mumbai, for the offences punishable under Section 500 of the Indian Penal Code, 1860 (hereafter “IPC”, for short).

2. Respondent No.2 filed a complaint under Sections 499 and 500 of IPC, contending that the petitioner got published the following news item in Mumbai Mirror Edition Mumbai dated 29th September 2018. The extract quoted in the complaint reads as under:-

“Harish Kumar Garg president of the Club said that the elections were being held in a free and fair manner. There are absolutely no irregularities at all. We have followed all Rules and Bye law. The allegations are totally baseless. This is an attempt to malign the image of the Club and the Committee,” Garg said

He explained that the Courts had not given any relief to Bhasin or Goenka” They first asked us to include them in our panel and when we rejected the they started making these allegations. No Court has given them any interim relief. They wanted to get the elections barred but they failed. All their attempts to defame us and cancel the elections have failed,” Garg said.

3. It is contended that the reputation of the complainant has been adversely affected by such averments, as allegations and the words are read by peers in the profession as well as by the public at large through such newspaper. It is stated that respondent no.2/complainant believes that whatever was stated by the petitioner has jeopardized the complainant's reputation in the profession, and he has been defamed. It is alleged that the petitioner tried to harm the reputation of respondent no.2/complainant by false and incorrect statements without any material or substance with the sole intention of defaming the complainant.

4. The learned Magistrate, by a detailed order dated 15th December 2018, issued a process against the petitioner. Aggrieved thereby, the petitioner has filed a present writ petition.

5. Learned advocate for the petitioner submitted that even if allegations in the complaint supported by the statement of the complainant and other material on record are accepted as correct, still necessary ingredients of the offences alleged are not fulfilled.

He submitted that there was no intention to defame the complainant. The article and contents thereof are not defamatory. It has not lowered the reputation of the petitioner. On the contrary, a statement that the Court has not granted relief to the complainant is true. A material fact is suppressed as orders dated 24th September 2018 and 11th March 2019 are suppressed. The ingredients of defamation are not satisfied. In support of his contentions, he relied on the judgment in the case of **W. Hay and others Vs. Ashwin Kumar Samanta** reported in 1957 SCC OnLine Calcutta 26 and **MJ Zakharia Sait Vs. T.M. Mohammed And others** reported in (1999) 3 SCC 396.

6. *Per contra*, the learned advocate for the respondents submitted that considering the scope of inquiry under Section 200 of the Code of Criminal Procedure, 1973 and the power of this Court under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973, the Court is guided by allegations in the complaint in law constitute or spell out offence punishable under Section 500 of IPC. He submitted that it is not necessary that there should be a meticulous analysis of the case before the trial to find out whether the case would end in conviction or not. If it appears on a consideration of allegations, in the light of the statement on oath of the complainant, that the ingredient of offence is disclosed and there is no material to show that complaint is mala fide, frivolous or vexatious, this Court should not interfere with the order of issuance of process. Inviting my attention to the reasons in the impugned order, he submitted that the Magistrate had exercised his discretion and had given

cogent reasons for the issuance of the process. In support of his contention, he relied on the judgment of the Gujarat High Court in the case of **Rohini Singh, D/o. Late Mr. M.B. Singh & 6 Vs. State of Gujarat & 1**, reported in 2018 SCC OnLine Guj 209. He also relied on the judgment of a Single Judge of this Court in the case of **Maammen Mathew Vs. Kuniel Kumar and another** reported in 2003 SCC OnLine Bom 1231, **Chaman Lal Vs. The State of Punjab** reported in 1970(1) SCC 590 and **Chandrasekhara Pillai Vs. Karthikeyan** reported in 1964 SCC OnLine Ker 79.

7. Having heard learned counsel appearing for the parties and having considered the material on record, the only question that falls for my consideration is whether the complaint and the order of issuance of the process should be quashed.

8. The parameters for inquiry under Section 200 of the Code of Criminal Procedure, 1973 are extremely limited to decide whether or not there is sufficient ground for proceeding (i) on the material placed by the complainant before the Court ; (ii) for the limited purpose of finding out whether a *prima facie* case for issuance of the process has been made out; and (iii) for deciding question purely from the point of view of the complainant without at all advertent to any defence that the accused may have. The inquiry needs to be restricted to the intrinsic quality of statements made before the Court on oath by the complainant to ascertain whether essential ingredients of offence are made out or not.

9. In the case of **Rohini Singh, D/o Late Mr M.B. Singh &**

6 (supra) the Hon'ble Shri Justice J.B. Pardiwala (as he then was) in paragraphs 45, 51, 61, 72 and 77 held as under:-

45. The gist of the offence of defamation is the publication of the defamatory matter. Although the gist of the offence of defamation lies in the dissemination of the harmful imputation, it is not only the publisher but also the maker thereof is liable for the offence. The gist of the offences of defamation lies in lowering the reputation of the person concerned or his family in the estimation of the others.

51. If the publication of an article which forms the basis of the complainant's case is not defamatory per se, then the complainant can only succeed in his action by providing an innuendo. **In the case on hand, the complainant has alleged many innuendos. He has also set up a case in this regard. The law of defamation recognizes two types of meaning; Natural and ordinary meaning of the words. This is not limited to the literal and obvious meaning but includes any inference which the ordinary, reasonable reader would draw from the words. There are two types of innuendo meaning; (i) False innuendo - Alternative meaning which the ordinary reasonable person can read between the lines or infer from the words (ii) True innuendo. This is where the words appear to be innocent to some people but appear to be defamatory to others because they have special knowledge or extra information. An example of this would be, to the majority of the readers, but it would be to the readers who knew that the person was already married and, as such, would be committing bigamy.** A libelous statement may not always be made with clarity. A degree of indirectness or innuendo may be there, and this can very well be expected since defamation is an offence. It is reasonable to think that he who defames is not anxious to invite legal consequences and would be looking for loopholes. That, however, does not protect him from prosecution.

61. Having gone through both the articles, i.e., the first, published in point of time and the later one after the first was withdrawn, prima facie, I am of the view that a case is made out to proceed against the writ applicants for the offence of defamation. Here is a case of a complainant who happens to be the son of the President of a political party, viz. Bhartiya Janta Party at the National level. The article in question talks about the business of the complainant and the sudden rise or the escalation in the revenue of the company owned by the complainant. The most disturbing part of the article, or to put it in other words, the imputation which could be termed as prima facie defamatory, is the averment that the turnover of the company owned by the complainant, who happens to be the son of the leader of the Bhartiya Janta Party increased 16,000/- times over in the year following the election of Shri Narendra Modi as the Prime Minister and the elevation of his father to the post of the party president. I do not propose to go into the question whether there has been any escalation, as pointed out in the article in question. What is important is the strong innuendo that the complainant has prospered because of the fact that he happens to be the son of a very powerful political leader, and that too, at a point of time when Shri Narendra Modi took over as the Prime Minister of the country. Let me put it straight without mincing any words. Prima facie, the article tries to portray a picture that an ordinary company, which had a meagre revenue of Rs. 50,000/-, proceeded to accumulate a revenue of Rs. 80,00,00,000/- in a single year, and that is only because of the political position of the father of the complainant and at a time when Shri Narendra Modi took over as the Prime Minister. What would be the effect on the mind of a common man when he would read the article in question.? In order to determine whether the article contains any defamatory imputations, the Court must ignore all the surrounding circumstances relating to such an article and should view the same as divorced from the context in which the imputations were made. It is true that mere lowering of oneself in self-estimation will not necessarily constitute defamation. What the Court has to consider is the effect of such an article on the mind of an ordinary right-thinking member of society, particularly bearing in mind the

class of persons who would be interested in reading such an article. In a country like India, it does not take a second for the people, in general, to start thinking that the complainant has prospered only because of his political contacts. People may even infer corrupt practice at the end of the complainant. In such circumstances, the article published by the writ applicants, prima facie, could be termed as defamatory in nature. Let me put it in a different way. In order to determine whether the article in question is defamatory in nature or not, the Court should put itself in the armchair of an ordinary person and view the matter from that standpoint confining itself to the article. The Court should look at the article as a whole, giving to the words used therein their obvious and unnatural meaning. It is possible that the complainant may not have anything to do with his father or the political status of his father. It is also possible that the complainant, on his own merit, may have brought his company in a good financial position. In such circumstances, the complainant can always redress the grievance that such an article, with so many innuendos in it, has lowered his moral and intellectual character in the estimation of the people at large. I am of the view that I should give an opportunity to the complainant to make good his case before the Trial Court by leading appropriate legal evidence in this regard. At the same time, the accused will also get the opportunity of putting forward their case before the Trial Court by leading appropriate oral as well as documentary evidence to establish that what has been stated in the Article in question is true, based on the public record. I should not undertake the inquiry as regards the truth or falsehood and assume the role of a trial Court in the exercise of my writ jurisdiction under Article 226 of the Constitution of India.

72. To bring the publication of a scandalous imputation under the Penal Law, it is not necessary to prove that it was done out of any ill will or malice or that the complainant had actually suffered from it. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant. Every sane man is presumed to have

intended the consequences which normally follow from his act. The accused, a journalist of some standing, can very well presume to know or to have reason to believe that the imputation published by him would harm the complainant's reputation. Exception 1 to S.499 recognizes the publication of truth as sufficient justification if it is made for the public good. But when truth is set up as a defence, it must extend to the entire libel, and it is not sufficient that only a part of the libel is proved to be true. The accused has to prove that the publication was both in good faith and for the public good. Good faith contemplates an honest effort to ascertain the truth of the facts. Fair comments cannot justify a defamatory statement which is untrue is fact. A comment cannot be fair if it is built upon facts which are not truly stated. It cannot be stated that because the accused bona fide believes that he is publishing what is true, that is, any defence in point of law. Bona fide belief might, in such a case, have some bearing on the quantum of damages in a civil action; perhaps also on the question of sentence in a criminal prosecution, but otherwise, it is irrelevant. Good faith means good faith and also the exercise of due care and attention. Due care and attention mean that the libeler should show that he had taken particular steps to investigate the truth and had satisfied himself from his enquiry, as a reasonable man, that had come to a true conclusion. The conduct of the accused during the course of the proceedings in a court is a relevant factor in determining his good faith. If there are several imputations, good faith or truth must be proved with respect to every imputation, and if he fails in substantiating truth or good faith in respect of any one imputation, the conviction must stand. A publisher of a defamatory statement can only be protected if he shows that he has taken all reasonable precautions & then had a reasonable and well-grounded belief in the truth of a statement. The plea of 'good faith' implies the making of a genuine effort to reach the truth, and a mere belief in the truth, without there being reasonable grounds for such a plea, is not synonymous with good faith. (vide *The Editor, Rashtra Deepika Ltd. v. Vinaya Raghavan Nair*)

77. The exception (1) to section 499 IPC recognizes the publication of truth as a sufficient justification if it is made for the public good. When the truth is set up as a defence, it must extend to statement. It is not sufficient that only a part of the statement is proved to be true.

10. According to the learned advocate for the petitioner, the statement that no Court has given them any relief in the extracted portion is true and correct. The learned advocate for the respondent submitted that there were various proceedings filed between the parties. Learned advocate for the respondent invited my attention to the order dated 19th September 2018, by which relief was granted to the complainant directing the defendant therein to give an inspection of the register of members.

11. It appears that at some stage of relief proceedings between parties some relief was granted to the complainant, and at subsequent stages, relief was refused. However, whether the statement that no Court has granted them any interim relief is true or false has to be ascertained at the stage of trial after considering material produced by the parties. In the circumstances referred to above, it is necessary that the complainant should be granted the opportunity to prove that the article published by the petitioner has lowered his reputation in his profession as he is a practising advocate and enjoys a good reputation with the Bar. As held in the judgment in the case of **Rohini Singh, D/o Late Mr. M.B. Singh & 6** (supra), it would be sufficient to show that the petitioner intended or knew or had reason to believe that the imputation made by him would harm to the complainant.

12. Publication of truth as sufficient justification is available

under exception (1) to section 499, provided it is made for the public good. But when the truth is set up as a defence, it must extend to the entire libel, and it is not sufficient that only a part of the libel is proved to be true. In the facts of the case, *prima facie*, it appears that part of the statement that no Court has given them any interim relief is partly true.

13. It is well settled that the inquiry while issuing process is extremely limited only to ascertain the truth or falsehood of the allegations made in the complaint based on the material on record. Therefore, the petitioner's defence need not be gone into at this stage.

14. The judgments relied upon by the petitioner are of no help to the petitioner, as in the case of **W. Hay and others** (supra), it arose out of the civil suit. The said judgment is of no help for adjudicating the order of issuance of process. The next judgment in the case of **MJ Zakharia Sait** (supra) arises from an election petition on the grounds of corrupt practice, which is inapplicable to the present case.

15. On reading of the impugned order, it discloses that the Magistrate has passed detailed order recording *prima facie* satisfaction that the allegations in the newspaper would fall within the expression of "defamation" under Section 499 of IPC. To determine whether imputations are sufficient to attract provisions of Section 499 of IPC, a judicial inquiry has been made *prima facie* by the Magistrate. On perusal, the impugned order indicates that the Magistrate has applied judicial mind. Therefore, in my opinion,

no case for interference is made out.

16. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)