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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1106 OF 2015

M/s. A and A Law, Through its
Proprietor, Mr. Anand V.

Patwardhan & Anr.

.. Applicants

v/s.

The State of Maharashtra And Anr.

.. Respondents

....

Mr. Sanjeev Kadam, a/w. Mr. Prateek P. Deshmukh, for the Applicants.

Mr. R.M. Pethe, APP, for State.

Mr. Prasad Pathare, a/w. Mrs. Almas Sati and Mrs. Bharti Sharma, for
Respondent No.2.

Respondent No.2 present.

....

CORAM: R.G. AVACHAT, J.

DATE : 9 FEBRUARY 2023.

P.C:-

The challenge in this application is to order of issuance of process for the offence punishable under Section 500 of the Indian Penal Code. It is Criminal Case No.554/SS/2010, pending on the file of Court of Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai. The Applicant herein is a practising Advocate. The Applicant, on behalf of his client, filed First Appeal No.153 of

2009 before Consumer Dispute Redressal Commission, Mumbai. In para 36 of the appeal memo, it has been averred as under:

“(36) The Appellant further states that the Ld. Forum failed to consider that the Respondent is a blackmailer and has put up demands for payments of lacs of rupees to the Appellant. He was arrested by the Police on 31/1/1991 and remained in jail for more than 4-1/2 years for possessing 25 kg. of Mandrax tablets. He was serving as a Fire Operator with International Airport Authority of India and was put under suspension. Subsequently, he was terminated from the services due to his bad conduct.”

2. The aforesaid matter is said to be *per se* defamatory. The Respondent/original complainant, therefore, filed the complaint against the Applicant herein and his client M/s. Villayati Ram Mittal for the offence punishable under Section 499 r/w 500 of the Indian Penal Code.

3. The learned Magistrate issued the process. The Applicant is, therefore, before this Court taking exception thereto.

4. Heard. Learned Advocate for the Respondent/complainant would submit that the memorandum of appeal in First

Appeal No.153 of 2009, preferred before the Consumer Dispute Redressal Commission, Maharashtra, was drafted by the Applicant herein. Although his client might have given him instructions to draft the appeal memo, the Applicant Advocate ought to have applied his mind to ensure that irrelevant and unparliamentary matter is not incorporated in the appeal memo. He should have also ensured that no matter incorporated in the appeal memo shall be defamatory. The Applicant Advocate owe duty to court, litigant of either side, besides professional ethics. The standards of professional conduct and etiquette warrant that an Advocate shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in court.

5. Learned Advocate for the Respondent/ complainant was right in his submissions. Needless to mention that *mens rea* is an essential ingredient of offence of defamation. The appeal memo, wherein the alleged defamatory matter has been incorporated, has been filed by the appellant therein. It has been specifically averred therein, “that the Appellant further states”. No doubt, the Applicant Advocate, while drafting the appeal memo, ought to have observed restraint and should not have employed intemperate language, what has been averred in para 36 appears to be based on information supplied by the Applicant's client. The Applicant did not have any

animus against the Respondent/complainant. Although the Applicant Advocate appears to have not adhered to the standards of professional conduct and etiquette, he cannot be even *prima facie* observed to have any intention to make the alleged averments with a view to harm the reputation of the Respondent/complainant. He also could not be attributed with knowledge or reason to believe that such imputation will harm the reputation of such person, since he being an Advocate, must have been under impression that his client would furnish material to produce as evidence in support of alleged defamatory averments. For this reason, this Court is inclined to allow the application.

6. The application is allowed.

(R.G. AVACHAT, J.)