

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

CRIMINAL WRIT PETITION NO. 6668 OF 2021

Sunil Murlidhar Bhagat ... Petitioner
v/s.
Alka Dhupkar and ors. Respondents

**WITH
CRIMINAL APPLICATION NO. 235 OF 2021
WITH
INTERIM APPLICATION NO. 390 OF 2023
IN
CRIMINAL APPLICATION NO. 235 OF 2021**

Sharad Nandasukhlal Shroff ... Petitioner
v/s.
The State of Maharashtra and anr. Respondents

Mr. Rajendra Sorankar for the Applicant in APL/235/2021 and for the Respondent No.2 in WP/6668/2021.
Mr. Niranjan Mundargi i/b. Maulik Chheda for the Petitioner in WP/6668/2021 and for Respondent No.2 in APL/235/2021.
Mr. A.R. Patil, APP for the State.

CORAM: R.G. AVACHAT, J.

DATED : 15th FEBRUARY, 2023.

P. C. :-

. Both these proceedings are decided by this common order since common questions of facts and law arise therein.

2. The Applicant – S.N. Shroff is an accused no.2 in Complaint Case No.2538/SS/2019 pending on the file of the Court of Metropolitan Magistrate, 64th Court, Esplanade, Mumbai while the Respondents in

Writ Petition are the original accused nos.7 and 8 in the said complaint. It is a case for offence punishable under section 500 of the Indian Penal Code. The Respondent in the application is the complainant therein. The learned Metropolitan Magistrate vide order dated 19/12/2020 issued process for offences punishable under sections 499 r/w. 500 of the Indian Penal Code against accused nos.1 to 6 in the complaint. He however dismissed the complaint against the accused nos.7 and 8 (respondents in Writ Petition No.6668/2021). The Applicant has preferred the application under section 482 of the Code of Criminal Procedure for setting aside the order of issuance of process against him. It appears that the complainant preferred revision to the Court of Sessions against the order of dismissal of the complaint against original accused nos.7 and 8. He was however unsuccessful therein. He has therefore preferred the Writ Petition taking exception to both the orders passed by the Court of Metropolitan Magistrate and Additional Sessions Judge.

3. The Respondent/Petitioner is one of the co-owners (landlord) of a premises situated at Plot No.42-A, Khimiya Kunj Building, Sion, Matunga Estate, Sion No.6, Sion (West), Mumbai. The Applicant and five others (co-accused in the complaint) are in possession of a separate

flat in the said premises as tenants. The Applicant is in occupation of flat no.2 situated on the ground floor of the said building. He claims to have been in possession of the said flat since 1956. According to him all was well until the demise of the father of the Respondent/complainant. The Respondent/complainant thereafter came to India and he started harassing the Applicant/tenant for one or the other reason. According to the Applicant since the building became old, the Respondent/complainant collected Rs.3,00,000/- from each of the tenants to carry out structural audit of the building. He again asked for further amount. Both the Respondent/complainant and his mother have filed suits for eviction. According to the Applicant, he did not make any structural additions or alterations in the flat in his possession. The Municipal Corporation authorities still issued him and other tenants notice under section 351 of the Mumbai Municipal Corporation Act. All the tenants replied to the notice on 26/04/2019. The last paragraph of the notice reply dated 26/04/2019 reads thus :-

“ In view of the above points, you will realize that the real issue is Mr. Sunil Bhagat’s attempts to terrorise and harass us and extort monies from us. The alleged breaches referred to by the Estate Department are capable of being regularized and we are exerting our efforts to get the same done. We, however, need sufficient time for getting the same regularized since no records relating to our building are available with the

MCGM itself. We shall keep you updated of the progress in the matter at regular intervals and request you to bear with us till then. ”

4. According to the Respondent/complainant, the aforesaid underlined matter is *per se* defamatory. He therefore instituted the complaint against the Applicant and the other tenants.

5. As regards the original accused nos.7 and 8 (Respondents in the Writ Petition) are concerned, it is his further case in the complaint that Respondent No.1 was an Assistant Editor of Mumbai Mirror (Daily) and Respondent No.2 is the son-in-law of the Applicant. The Respondent No.2 (in Writ Petition) got the news items published in the daily mirror. The news item is part and parcel of the complaint. The Respondent No.2 (in Writ Petition) is seen pointing out/identifying the premises appearing in the photograph in the daily mirror.

6. The learned advocate for the Applicant would submit that the Applicant is 81 years of age. He is a cardiac patient. Not less than 15 criminal cases have been instituted by the Respondent/complainant against the Applicant and other tenants besides number of civil proceedings. The Applicant did not have any intention to cause harm to the reputation of the Respondent. Notice reply has not been

published. The reply was given in response to the notice issued by the Municipal Corporation authorities.

7. Whatever submissions have been made in notice reply were in the context of the facts and circumstances of the case. The learned advocate for the Applicant therefore urged this Court to exercise its inherent powers to quash the order of issuance of process against the Applicant.

8. The learned advocate for the Respondent/complainant would on the other hand submit that the aforesaid underlined matter is *per se* defamatory. The Applicant and the co-accused should have observed self restraint. They ought not to have used intemperate language. He adverted this Court's attention to the daily mirror to submit that the Respondent No.2 (in Writ Petition) is appearing in the photograph. The tenants (accused) gave interview to the press and made defamatory allegations. According to the learned advocate for the Respondent/complainant the trial court was justified in issuance of process. He would further submit that the trial court erred in dismissing the complaint against the Respondents (in Writ Petition) and the Revisional Court too committed mistake in upholding the order of dismissal of the complaint.

9. Considered the submissions advanced. Perused the complaint, news items published in the daily mirror, orders impugned herein and the documents relied on.

10. The records indicate the Applicant to have been in possession of flat no.2 in the building since 1956. The Respondent is one of the co-owners of the said building. The records indicate that the civil litigation is pending between the landlord on the one hand and the tenants on the other. The records further indicate the Respondent/complainant to have filed not less than 15 criminal cases (NCs, FIRs) against the Applicant and the tenants. The same indicates his instinct. The Applicant is 81 years of age. There are medical papers on record to indicate that the Applicant is a cardiac patient. In exercise of jurisdiction under section 482 of the Code of Criminal Procedure, i.e., in the interest of justice, this Court is inclined to allow the Application.

11. As regards the prayer in Writ Petition is concerned, there is a concurrent finding of both the Courts below. In exercise of writ jurisdiction and in view of the peculiar facts and circumstances of the case, this Court finds no reason to interfere with those orders. On

going through the news item published in the daily mirror, this Court does not come across any matter which could be said to be defamatory as against the writ petitioner.

12. In view of the above facts and circumstances, both the proceedings stands disposed of in terms of the following order :-

- (a) Criminal Application No.235/2021 is allowed.
- (b) The order dated 19/12/2020 passed by the learned Chief Metropolitan Magistrate, 64th Court, Esplanade, Mumbai in Complaint Case No.2538/SS/2019 for issuance of process against the Applicant is set-aside.
- (c) The order dated 28/09/2021 passed by the learned Sessions Judge, Greater Mumbai in Criminal Revision Application No.70/2021 is confirmed. Hence, the Writ Petition No.6668/2021 stands dismissed.
- (d) Interim Application No.390/2023 stands disposed of in view of disposal of the Criminal Application No.235/2021.

**PREETI
H JAYANI**

(R.G. AVACHAT, J.)

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