

AGK

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

WRIT PETITION NO.363 OF 2023

Samir Sudhakar Oke

... Petitioner

V/s.

Kertikumar Ranchhodji Desai & Anr.

... Respondents

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Mr. Jaideep Lele with Ms. Namrata Agashe for the
petitioner.

Mr. Arfan Sait, APP for respondent no.2/State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 13, 2023

PC.:

1. The writ petition is directed against legality and validity of order dated 11th February 2021 passed by the learned Magistrate, 17th Court, Borivali, Mumbai in Criminal Complaint No.559/SSW/2018 issuing process against the petitioner for offence punishable under sections 500 and 501 of the Indian Penal Code, 1860.

2. Respondent no.1 filed complaint against the petitioner alleging that the petitioner pasted a paper indicating that the complainant is 'chor' (thief) near notice board on the entrance gate on the society's compound. Another instance of alleged defamation is letter dated 19th August 2017 addressed to one of the member of the society wherein the complainant was allegedly called as Barberic Cruel Creature and Scoundrels. It is alleged that the petitioner stated that he used to give respect to wild dog "Ruhi"

rather than the complainant. These acts, according to the complainant, defame him.

3. The Magistrate sent the complaint for verification. The police recorded statement of witnesses. The Magistrate based on inquiry under section 202 by the impugned order issued process against the petitioner recording prima facie satisfaction of the ingredients of offence.

4. The contention of the petitioner is that in the verification of the complaint, the complainant has not stated anything about Explanation (4) to Section 499. Such explanation is averred in the complaint but has not been consciously averred in the verification statement and, hence, the Magistrate could not have ordered issuance of process.

5. The law on the point of challenge to order issuance of process is settled. The scope of such writ petition is to ascertain by prima facie reading of the complaint and material on record to satisfy itself as to whether the essential ingredients of the offence alleged against the accused are prima facie made out by accepting averments as correct. It is not expected of the Magistrate to consider truth or otherwise of the averments. The applicant in paragraphs 9 and 11 of the verification statement states as under:

“9. I say that the Accused has addressed a letter dated 19.08.2017 to one of the society member/ex-committee members wherein the Accused referred the Complainant as “**BARBARIC CRUEL CREATURE**” and “**SCOUNDRELS**”. The Accused further said that he use to give respect to wild dog “Ruhi” rather than the Complainant. The Accused has used slandering language which amounts to Defamation.

Therefore the Complainant served a legal notice dated 13.08.2018 through his Advocate upon the Accused asking him to tender unconditional apology.

11. I say that during January to March 2014 the Accused pasted paper indicating that the Complainant is **CHOR (means thief)** in lift, near notice board, entrance gate, society's compound. Furthermore the Accused intentionally shouting loudly as CHOR-CHOR whenever the Complainant and Accused came face to face. During this time the Complainant was holding post of Secretary. The Complainant's son Shri Mayur K. Desai died on 10th February 2014 and the Complainant was under depression."

6. Reading of paragraphs 9 and 11 of the verification statement, I am satisfied that *prima facie* necessary ingredients of offence under section 500 of the Indian Penal Code are fulfilled. Therefore, there is no merit in the writ petition.

7. The writ petition, therefore, stands dismissed. No costs.

(AMIT BORKAR, J.)