

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (APL) No.601/2023

1. Smt. Lata wd/o Dipak Paidlewar,
Aged about 51 years, Occ.-Household,
R/o.-C.D.C. Colony, near Shiv Mandir,
Khalasi Lne, Mohan Nagar, Nagpur.
2. Usha w/o Bharat Singh
Aged 52 years, Occ. Household,
R/o. Anandpura, Kotha, Rajasthan and
Khalasiline, Shivmandir, Mohan Nagar, Nagpur. Applicants

-Versus-

1. State of Maharashtra,
through Police Station, Jaripatka, Nagpur.
2. Sunil s/o Hillary Jacob,
Aged about 53 years, Occ.-Social Worker
Cell No.9823012474.
3. Mrs. Jenetterani w/o Sunil Jacob,
Aged about 40 years, Occ.-Household,
Cell No.9503613109
Respondent nos.2 and 3, R/o.Plot No.30,
Christian Colony, Mecosabagh, Nagpur. Non-applicants.

Mr. C. Thamke, Advocate for the applicants.

Mr. A. Chutke, APP for non-applicant no.1.

CORAM : G.A. Sanap, J.

DATE : 26-06-2023

Oral Judgment

The non-applicant nos. 2 and 3 despite service of notice have failed to appear before this Court. Sufficient time has been granted to them to appear and defend the matter.

2. I have heard the learned Advocate for the applicants and the learned APP for the State/non-applicant no.1. Perused the record and proceedings.

3. The applicant nos. 1 and 2 who have been arraigned as an accused nos. 1 and 2 in the complaint filed against them have prayed for quashing the Summary Criminal Case No.27064/2018 for the offences punishable under Sections 294 and 500 of the Indian Penal Code (for short, 'I.P.C.') pending against them before the learned Judicial Magistrate First Class Court No.7, Nagpur.

4. The non-applicant nos. 2 and 3 filed the complaint in the Court of Judicial Magistrate First Class No.7, Nagpur alleging that on the report of the applicant no.1, they were prosecuted in Sessions Trial No.39/2015, on the allegations that they had abetted the commission of suicide by the husband of applicant no.1. It is stated that in the said sessions trial the applicants gave false evidence. The applicants, according to the non-applicant nos. 2 and 3, in addition to the lodging a false report, made several complaints against them to the revenue authority. In those complaints they have made false and defamatory statement. On the basis of the facts stated in the complaint filed by non-applicant nos. 2 and 3, and after recording the verification statement of the non-applicant no.2, the learned Magistrate took the cognizance and issued the process against the applicants for the offences punishable under Sections 294 and 500 of the

Indian Penal Code (for short, 'I.P.C.').

5. It is the case of the applicants that the complaint filed by the non-applicant nos. 2 and 3 is silent about the basic averments to constitute the offences punishable under Sections 294 and 500 of the I.P.C. There is no material on record to make out the basic ingredients of these two offences alleged to have been committed by the applicants. The verification statement of the non-applicant no.2 recorded before the learned Magistrate is conspicuously silent about the acts allegedly committed by the applicants to constitute the offences punishable under Sections 294 and 500 of the I.P.C. It is stated that the learned Magistrate without applying mind to the facts stated in the complaint as well as to the verification statement has mechanically issued the process against them. On these averments, the applicants have prayed for quashing the said complaint and the order of issuance of process.

6. I have heard the learned Advocate for the applicants and the learned APP for the State. Perused the record and proceedings.

7. I have gone through the complaint and verification statement of the non-applicant no.2. I have also gone through the order passed by learned Judicial Magistrate First Class Court No.7, Nagpur. It needs to be stated that the non-applicant nos. 2 and 3 on the basis of the facts stated in the complaint

prayed for issuance of process against the applicants. The learned Magistrate after filing of the complaint by the non-applicant nos.2 and 3 recorded the verification statement of the non-applicant no.2. It is needless to state that in the complaint as well as stated in the verification statement recorded before the Court, the basic ingredients of the offences alleged to have been committed by the accused are required to be stated. The learned Magistrate before issuing the process is required to peruse the complaint, verification statement and record his satisfaction that the facts stated in the complaint as well as in the verification statement *prima facie* make out the ingredients of the offences alleged to have been committed by the accused.

8. A perusal of the complaint would show that the allegations made in the complaint are vague and general in nature. It is to be noted that no role or act has been attributed to the accused either in the complaint or in the verification statement. It is seen on perusal of the complaint that the main grievance of the non-applicant nos.2 and 3 in the complaint was with regard to the false evidence given by the applicants in the sessions case. It is to be noted that the learned Magistrate rejected the prayer for issuance of process for the offence of giving false evidence.

9. The learned Magistrate was pleased to issue process for the offences punishable under Sections 294 and 500 of the I.P.C. Section 294 of the I.P.C primarily provides the punishment for the obscene acts and songs. Perusal of the complaint would show

that it is silent about obscene acts or songs by the accused persons. It is further seen that there is no whisper in the complaint with regard to any defamatory statement made by the applicants orally or in writing to malign their image and reputation in any manner in the eyes of the society. It is further seen that the verification statement is also conspicuously silent about these facts.

10. A perusal of the order would show that the learned Magistrate has observed that he has taken into consideration the facts stated in the complaint and the verification statement and also the documentary evidence filed with the complaint. The approach of the learned Magistrate is contrary to the law. The facts stated in the complaint and the verification statement must be sufficient to make out the basic ingredients of the alleged offence. The learned Magistrate has to record his prima facie satisfaction that the facts stated in the complaint as well as in the verification statement are sufficient to make out the offence against the accused. It is seen that in this case the learned Magistrate has cursorily referred to some of those documents in his order. It is seen that sum and substance of the documents has not been stated in the order. The sum and substance of the documents is missing in the complaint as well.

11. On going through the record and particularly the complaint and verification statement, I am satisfied that the offences for which the process has been issued have not been made out. The

learned Magistrate has failed to consider the complaint and verification statement.

12. It is to be noted that the criminal prosecution is a serious matter. The learned Magistrate is therefore required to satisfy himself that the facts stated in the complaint as well as in the verification statement disclose the basic ingredients of the offences. It is not out of place mention that a person cannot be made to face the ordeal of criminal prosecution without sufficient material to justify such a prosecution. The learned Magistrate in this case has failed to consider the basic facts stated in the complaint. The learned Magistrate failed to bear in mind the fundamental principles of the law and has mechanically passed the order. In my view, therefore, the prosecution which has been launched against the applicants is nothing but a misuse of the process of law. In my view, the application is therefore deserves to be allowed and accordingly it is allowed.

13. The order issuing process against the accused as well as criminal complaint is quashed and set aside.

14. Application stands disposed of.

JUDGE