

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

CRIMINAL APPLICATION NO.993 OF 2022

IN

CRIMINAL APPEAL (ST.) NO.8179 OF 2022

(Shri Narendra Govindlalji Jetha Vs. State of Maharashtra and ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri C.F. Bhagwani, Advocate for the appellant.
Shri I.J. Damle, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JULY 26, 2023.

Heard.

2. Present application is filed for seeking leave to prefer an appeal against the order passed by the Judicial Magistrate First Class, Court No.4, Nagpur by which complaint is dismissed under Section 203 of the Code of Criminal Procedure, 1973.

3. The appellant is the original complainant who filed complaint before the Judicial Magistrate First Class under Section 499, 500, 501 and 504 read with Section 34 of the Indian Penal Code. As per the allegation in the said complaint, the complainant has purchased the Flat Nos.1, 5 and 8 from the respondents who have constructed on N.I.T. Plot No.1090 bearing N.M.C. house No.1288, Sheet No.222, City Survey No.166 situated at Ward No.20, Nandanvan Layout, Nagpur by registered sale-deed dated 20/11/2012 and 16/12/2013.

4. Prior to execution of the abovesaid registered sale-deed, the respondent have executed an agreement of sale dated 16/03/2010 and thereafter also executed registered agreement of sale dated 29/06/2012 in the respect of the above said flats in favour of the complainant. As per the recitals of the sale-deed as well as agreement of sales, the respondents have agreed to pay all the dues of N.I.T. and N.M.C. as well as also agreed to pay the interest at the bank rate to the complainant on the amount which they have taken prior to sale deed. It is further alleged that if there is delay on their part for execution and registration of the sale-deed, they have to pay the losses caused to the complainant, accordingly, the agreement was executed.

5. As per the agreement, the accused persons have not executed the sale-deed and caused delay of more than 45 months for registration of the sale-deed. As per the allegation in the complaint thereafter sale-deed was executed on 16/12/2013. The complainant has demanded the interest amount, excess stamp duty amount, tenants deposit amount etc. but the respondents avoid to pay said amount for one or the other reasons. Thereafter considering the conduct of the respondents, the complainant has issued the notice dated 24/01/2014 to all accused persons and same has been acknowledged by them. The accused in spite of acknowledging the said notice had not repaid the amount claimed by the complainant, therefore, the complainant constrained to

file the suit for recovery of amount against all the respondents. In response to the suit summons the respondents appeared and filed written statement. It is alleged by the complainant that in the said written statement, the respondents with malafide intention and with motive to defame the complainant make totally false and baseless defamatory allegations on the complainant and thereby caused the damage to the image of the complainant who is renowned Advocate of city of Nagpur. The sole intention of the respondents is to cause harm to the reputation of the profession of the complainant. With this averment, the complainant has filed the complaint before the Judicial Magistrate First Class, Nagpur. By taking cognizance of the said complaint, the complainant was directed to adduce evidence. The complainant has adduced his evidence by examining himself and narrated the fact that he has issued the notice to the respondents on 24/01/2014 and in response to the notice, the respondents have not paid the amount, therefore, he filed Civil Suit bearing No.313/2014. The respondents have filed their reply and in the said reply they have alleged that the present complainant has duped them and purchased the property. After recording the verification of the complainant, the learned Judicial Magistrate First Class has fixed the matter for hearing before charge. The complainant stepped into the witness box and examined himself and narrated about the contents of the complaint. The sum and substance of his deposition is that in

January, 2014 he has issued the notice but as his amount was not paid, therefore, he constrained to file suit. In the said suit, the respondents appeared and filed their written statement and defamed him. The defence Counsel has not cross-examined the complainant and reserved the right of cross examination.

6. The learned trial Court after perusal of the complaint and evidence observed that the complainant has not produced any witness to support his allegation neither he has shown how his reputation is harmed and lowered and how the contents of the written statement caused his mental harassment and how he has been defamed. The learned trial Court further observed that in the Special Civil Suit No.313/2014, the defendants in their written statement, appeared to have made statements that the plaintiff that is the present complainant made a fraud upon him. The said expression in the written statement falls under the purview of Order VI Rule 4 of the Code of Civil Procedure. It is further observed by the trial Court that *prima facie* it appears that the accused is the lawful authority over the complainant with respect to the subject matter of accusation as they appeared to have every knowledge regarding the disputed property.

7. Considering all the material available on record, there is no *prima facie* material to proceed against the accused and to proceed with the complainant and the

complaint is dismissed. Against the said order passed by the learned Judicial Magistrate First Class, present appeal is preferred by the appellant on the ground that the trial Court has not considered that *prima facie* case is made out, as there is specific averment in the written statement which defames the complainant and also caused harm to the image and reputation of the complainant who is Advocate by profession. Due to the said allegation in the written statement, the image of the complainant is damaged. Thus, *prima facie* case is made out by the complainant however, learned trial Court has not considered the same and wrongly dismissed the complaint in view of Section 203 of the Code of Criminal Procedure.

8. Learned Counsel Shri Bhagwani submitted that the appellant has arguable points in the present appeal. The order passed by the learned trial Court is erroneous and not according to the provisions of law, therefore, leave is to be granted to prefer an appeal.

9. Though respondents are served, none appears for the respondents.

10. Perused the complaint as well as the verification recorded by the trial Court and the evidence of the complainant recorded during hearing before the charge. Chapter XV Section 200 of Code of Criminal Procedure speaks about the examination of the complaint. It says that a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant

and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. The first proviso to Section 200 of Cr.P.C. states when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses. Clause (a) and (b) are in respect of if the complaint is made by the public servant and proviso to some states that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

11. Section 202 of the Cr.P.C. deals with the Postponement of issue of process which states that (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit (and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction) postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Thus, Section 202 reflects that the complainant has to made out the case for issuance of process. The options available with the Magistrate is either to direct the investigation or Magistrate and inquire himself in view of

Section 202 of the Cr.P.C.

12. Section 203 of the Cr.P.C. deals with the dismissal of the complaint which states that if, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

13. In the light of the above provisions, if the recitals of the complaint is taken into consideration only statement made by the complainant is that he was defamed by the respondents by making any written statement. The recitals of the complaint nowhere shows that what is the statement made by the respondents in the written statement. It nowhere discloses in what manner the reputation of the complainant was damaged or harmed and in what manner said damage is caused to the complainant. However, learned Magistrate has taken cognizance of the said complaint and recorded the verification of the complaint. In the said verification also the complainant only stated on oath that the accused have made allegations against him and defamed him. No specific recitals are made in the said either in the complaint or in the verification. During the deposition before the Court before framing of the charge also the

complainant has only made a statement that “त्यामध्ये त्यांनी संयुक्तीक लेखी जबाब व प्रति दावा दाखल केला त्यामध्ये त्यांनी पहिल्यांदा माझ्याविरूद्ध आरोप केलेले आहे.” Thus, except this sentence no other recitals are deposed by the complainant before the Court.

14. Learned trial Court has reproduced the Section 499 as well as the exceptions given under Section 499 and observed that the complainant on the other hand has not produced any witness to support his allegation. Neither he has shown how his reputation is harmed and lowered. If the ingredients of the Section 499 of the Indian Penal Code are taken into consideration, it says that Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. No imputation is said to be harmed a persons' reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful, is the explanation given under Section 499 of the Indian Penal Code.

15. To attract Section 499 punishable under Section 500, the complainant has to show that by either words spoken or intending to harm his reputation the person has used the words or uttered the words or written the words by which the character or the reputation or the moral of the said person is lowered in the society or if lowers the credit of that person. Then the offence under Section 499 punishable under Section 500 is made out.

16. In view of the above provision, if the recitals of the complaint and the evidence adduced by the complainant is taken into consideration there is no whisper either in the complaint or in the evidence adduced by the complainant that what words are used by the respondents and in what manner the reputation of the complainant was lowered by the respondents. Learned trial Court has observed that *prima facie* case is not made out by the complainant and there is no *prima facie* material, and therefore, dismissed the complaint. Section 203 of the Code of Criminal Procedure gives the power to the Court to consider the material and after considering the statement on oath if the Magistrate is of the opinion that there is no sufficient ground for proceeding, he can dismissed the complainant. Thus, no illegality or error is committed by the trial Court.

17. Thus, the appellant has not made out the case to show that the appellant would be successful in the present appeal to make out the case under Section 499 as

well as the order passed by the learned Magistrate is erroneous. I could not find any error committed by the trial Court while passing the order, so the application is without merits and liable to be dismissed.

18. In view of that the application is dismissed and the prayer of the applicant to grant leave is hereby rejected.

(URMILA JOSHI-PHALKE, J.)

**Divya*