



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 18 OF 2010

Raosaheb s/o. Haribhau Bhosle,
Age 70 years, Occu. Secretary,
Shri. Bankatswami Shikshan Sanstha,
Khadikighat, Tq. And Dist. Beed,
R/o. Near Maroti Mandir, Shahunagar,
Taluka and District Beed

.. Applicant

Versus

1. The State of Maharashtra
Through - Police Inspector,
Police Station, Beed,
Taluka and District Beed

2. Dr. Gopalrao s/o. Baburao Sondge,
Occu. Service, R/o. Laxmikunj,
Bindusara Colony (West),
Taluka and District Beed

.. Respondents

Mr. K. T. Shirurkar holding for Mr. S. R. Kolhare, Advocate for
Applicant;
Ms. Vaishali Shrikrushna Chaudhari, APP for Respondent No.1;
Mr. Z. H. Farooqui, Advocate holding for Mr. Niteen V. Gaware,
Advocate for Respondent No.2

CORAM : S. G. MEHARE, J.

DATE : 04-09-2024

PER COURT :-

1. Heard the learned counsels for the respective parties.
2. The applicant has impugned the order issuing of process against him by the learned Chief Judicial Magistrate, Beed, for the offence punishable under Section 500 of the Indian Penal Code in S.T.C.No.890 of 2007, dated 07.05.2007.

3. The learned counsel for the applicant submits that there was a history of litigation. The matter was reached up to the Hon'ble Supreme Court, for a civil dispute and it was concluded that the respondent/complainant did not defame the applicant/accused. In the light of this fact, the learned counsel for the applicant submits that the order of the learned Chief Judicial Magistrate, Beed, issuing process under Section 204 of the Code of Criminal Procedure (for short, "Cr.P.C."), is a mechanical and without application of mind.

4. He submits that there were no specific instances or the words pleaded in the complaint. It was just a statement making general allegation that whatever the acts the applicant did, was his defamation. Hence, petition deserves to be allowed.

5. The learned counsel for the respondent No.2 has vehemently argued that all relevant papers were attached with the petition wherein a defamatory statement appeared. The Court not only considered the contents of the petition but also the affidavit of the respondent/complainant. The learned counsel for the respondent/complainant submits that the complainant had filed a compensation suit for his defamation. However, that matter has been dismissed on technical ground that required sanction was not obtained from the learned Assistant Charity Commissioner. Therefore, it would not help the applicant throwing the complaint.

6. The learned counsel for the applicant read the complaint. It appears from the complaint that the applicant gave a history of his service at different places. He alleged that the respondent harassed him. Hence, he resigned from College from the post of Principal. A defamatory news was published in a news paper even after resigning and handing over the charge. The over all contentions of the applicant were just sentences. However, no specific words of defamation were pleaded in the complaint.

7. So far as the complaint under Section 499 read with Section 500 of the Indian Penal Code is concerned, the Court of Magistrate can take cognizance only on the complaint. The rule of pleadings applies to such cases. The complaint is to be filed under Section 200 of the Cr.P.C. Section 204 of the Cr.P.C. provides that the Magistrate has to form an opinion that there are sufficient grounds for proceeding, the cognizance of an offence needs to be taken and when he is satisfied that there are sufficient grounds for proceeding, he may issue either summons or warrant as the case may be.

8. Sub-Section (2) of Section 204 of the Cr.P.C. further provides that no summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed. However, in the body of the complaint, list of witnesses was not given.

9. The question is, whether the material was available to form an opinion that there is a sufficient ground for proceeding against the complaint and taking cognizance of the offence.

10. Section 499 of the Indian Penal Code defines the term "Defamation". To satisfy the learned Magistrate that there is defamation, there must be a mention of specific words either spoken or intended to be read, or by signs or by visible representations and the imputation concerning the complainant intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of the complainant made subject to exception mentioned in Section 499 of the Indian Penal Code.

11. It cannot be said to be a defamation unless the specific words have been pleaded. Bare one line is not suffice to form an opinion that the offence is made out.

12. Reading the contents of the complaint, this Court is of the view that there was absolutely no pleading sufficient to proceed with the complaint. Even the contents of the complaint were not sufficient to take cognizance. The order of the learned Chief Judicial Magistrate appears to be mechanical and without application of mind. It seems to be passed in a routine course.

13. Hence, for the above reasons, petition stands allowed.

14. The order of the learned Chief Judicial Magistrate, Beed, dated 11.06.2007 passed in S.T.C.No.890 of 2007, dated 07.05.2007, stands quashed and set aside.

15. The complaint of the respondent/complainant also stands dismissed.

(S. G. MEHARE)
JUDGE

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