



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2583 OF 2010

Mahadeo Manohar Parkar
VERSUS
The State Of Maharashtra And Ors

Mr. H. I. Pathan, Advocate for the applicant
Mr. S. P. Sonpawale, APP for the respondent/State
Mr. S. S. Kote h/f Mr. A. V. Hon, Advocate for respondent No.2

CORAM : S. G. MEHARE, J.
DATE : 19th AUGUST, 2024

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the State and learned counsel for respondent No.2.
2. It is an interesting case of defamation filed against the lawyer who was representing accused.
3. The respondent No.2 was the witness in R.C.C. No. 39/2005 for the complainant. The lawyer/petitioner for the accused put some questions to him. However, he felt insulted of those questions. He considered it his defamation. He tried to convince the petitioner that he should verify the facts first and then put the question to him. It is alleged that when the respondent No.2 had objection on the questions neither the Court

nor the Public Prosecutor stopped the petitioner from asking such questions. The questions were relating to his past. He felt aggrieved of those questions and filed a complaint under Section 500 r/w 34 of the Indian Penal Code.

4. The learned Judicial Magistrate First Class by impugned order dated 10/09/2009 in Summary Case No. 447/2009 passed an order of issue process against the applicant under Section 500 r/w 34 of IPC.

5. The learned counsel for the petitioner submits that the accused had engaged a legal practitioner. The accused had instructed him the facts. Whatever questions he put to the witness were on the instructions of his client. He was not personally liable for the effect of such question. The opposite party has a right to cross-examine the witness. As far as the question on the character of the witness is concerned, section (3) of section 146 of the Indian Evidence Act provides that it is lawful to shake the credit of the witness by injuring his character although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture. The law gave the rights the other side to shake the credit of the witnesses by

injuring his character. Therefore it cannot be said that the applicant being the practicing lawyer has committed any offence.

6. He further argued that learned Judicial Magistrate First Class mechanically issued the process without application of mind. He did not examine the contents of the complaint carefully and passed the illegal impugned order. He relied on the case of *Rajendra Kumar Shahani Vs. State of Maharashtra, 2018(3), Mh.L.J. (Cri.)621*. He prayed to allow the application.

7. Learned counsel for respondent No.2 has vehemently argued that though the applicant was brought to the notice that the questions are defamatory and without foundations, he went on asking the questions. Not only this on the next day of cross-examination the news was flashed in the newspaper that few defamatory questions were put to respondent No.2 in Section 146(3) of the Indian Evidence Act does not allow this. Though the instructions were given to the lawyer by the litigant, he being the legal practitioner was bound to examine the effects of such questions. Since the law permits that does not give the unfettered powers to the legal practitioner to put any question without foundation. Therefore, the applicant though practicing law is equally responsible for the acts. There was no need to publish a

news in the news paper under the head of defamatory questions. Considering the role attributed to the applicant, he did not discharge his legal duties to maintain the decorum of the Court of law and he didn't respect his profession. Therefore, *prima facie* case was made out and the learned Judicial Magistrate considering the deliberate acts against, by the applicant correctly issued the process. What was the intention the applicant in putting such defamatory question would be proved on merit. The court exercised the power within the the provisions of law. The case of ***Rajendra Kumar Shahani*** (supra) does not apply to case at hand. Hence, petition may be dismissed.

8. The Bombay High Court in the case of ***Rajendra Kumar Shahani*** (supra) had an occasion to deal with identical issue. The complaint was filed against the legal practitioner alleging that he had committed offence under Section 500 of Indian Penal Code. The application was filed for revocation probate granted to the complainant on the basis of false defamatory statement against the complainant. Various grounds were raised for revocation of probate certificate. However, defamation case was filed. Crystallizing the law on the role of the Advocate for parties, the Court observed that the legal

practitioner cannot travel beyond the scope of advocacy. He had provided the legal assistant as the professional to the applicant therein. It would be an abuse of process of law to prosecute him for offence of defamation. By any stretch of imagination it can't be said that counsel in any manner had made averments. Advocate or Solicitor in this regard the professional duties while representing his client in the Court and unless he crossed boundary of his professional duty he cannot be attributed to any malafides of acting in connivance with with clients. There could be evidence of malice or malafide on fact of the counsel and no *prima facie* case is made out against him.

9. The court also discussed the contents of Section 500 r/w 34 of the IPC and evaluating the law ruled that it is evident that respondent No.2 ought not to have prosecuted for the offence of defamation. He did not cross the boundary line of his professional duties. The application was filed on the basis of the instructions which is apparent on the face of record. Merely, because, the complainant has averred in the complaint that there was express defamation, it cannot be said that *prima facie* case is made out against respondent No.2. Time and again it is emphasis that, the Trial Court would be well advised to be cautious while

entertaining complaints against legal practitioners. It is only where privileges have been abused they shall prosecuted.

10. Before inviting the person an accused the Court is suppose to apply his mind. He should be satisfied with the material placed before is that the case is made out against the proposed accused to be tried and there is likelihood of his conviction or at least there is a material to open the trial. The order passing of issue process must reflect the application of mind otherwise such orders are liable to vitiated. Though the Court has recorded the finding that on perusal of the contention and allegations in the matter it does not reflect that he considered the status of the applicant being a legal practitioner, pleading against the complainant. *Prima facie* there was nothing to believe that there was material to issue process against the applicant.

11. In view of the provisions of law, the role attributed to the lawyer for and on behalf and on instructions of the litigant he cannot be said that deliberately put the questions affecting the character of the witness. What the questions put to respondent No.2 in cross-examinations were obviously on instructions of the complainant. Unless a specific facts are brought before the Court

that those questions were put with ulterior motive having concern with lawyer, no orders of issuing process should be passed against legal practitioner representing his client. Law laid in the case of ***Rajendra Kumar Shahani*** (supra) is squarely applicable to case in hand. Hence, the application deserves to be allowed. The impugned order of the Judicial Magistrate First Class dated 10/09/2009 passed in Summary Case No. 447/2009 stands quashed and set aside. The complaint against the applicant stands dismissed. No order as to costs.

(S. G. MEHARE, J.)

ssp