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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 74 OF 2023

ABHISEK RANJAN ... APPLICANT
VS
VIDHARSHAN PERERA AND 2 ORS. ... RESPONDENTS

Mr. Sharmad Pai Kane, Advocate for the Applicant.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 6th FEBRUARY 2024

ORAL ORDER:

1. Heard the learned Counsel for the Applicant.
2. The present Petition is filed challenging the impugned order dated 07.04.2018 passed in Private Criminal Case No. 1/2017/A, wherein the learned Magistrate after considering the deposition of the complainant and the verification of the complainant, issued process against the Petitioner for the offence punishable under Sections 500, 384 and 506 part II read with Section 34 of IPC.
3. The learned Counsel for the Applicant would submit that there is no material on record to show that the alleged defamatory statements were in fact posted on Facebook or other social media

by the Petitioner. He submits that the allegations and the translation clearly go to show that the same were found on the profile of some other person.

4. The learned Counsel would further submit that even if, revisional jurisdiction is available under Section 397 of Cr.P.C., the remedy under Section 482 of Cr.P.C. for filing the Petition is not taken away.

5. The complaint which is lodged before the learned Magistrate by Respondent No. 1 is under Section 200 of Cr.P.C., wherein there are specific allegations against the Petitioner that the Petitioner being the Ex-Director of the Company had confidential personal information of the Complainant/Respondent No. 1. The phone number and the other details are mentioned in the complaint itself. There are specific allegations in the complaint stating that the present Petitioner along with others, is responsible for defaming Respondent No. 1 on Facebook and other social media and also demanding money for withdrawal of such defamatory material.

6. The learned Magistrate on receiving such complaint, passed an order which is dated 09.01.2018, thereby postponing the proceedings for the purpose of inquiry to be conducted since the

Petitioner resides beyond the jurisdiction of the said Court. After such order, an inquiry was conducted, wherein the complainant had deposed and produced the necessary material before the Court and only upon considering such material, the learned Magistrate found that there was *prima facie* material to show involvement of the Petitioner. Accordingly, the impugned order was passed.

7. It is an admitted fact that the Petitioner directly approached this Court without availing the remedy available under Section 397 of Cr.P.C. The powers of this Court to exercise its extraordinary jurisdiction under Section 482 of Cr.P.C. is now well settled. Such exercise has limited scope and only if it is found that the proceedings before the Court are an abuse of the process of law and unwarranted.

8. In the case of **Prabhu Chawla Vs. State of Rajasthan & Another, (2016) 16 SCC 30**, the Apex Court has observed that there is no bar to exercise power under Section 482 of Cr.P.C. when Revision under Section 397 is available. However, in the said decision, the Apex Court has also observed that inherent powers are to be exercised with restraint and not as a routine matter. When the Petitioner has a remedy available under Section 397 of Cr.P.C. to challenge such an order and when it is shown that

there is no abuse of the process of law, the Court should not exercise its extraordinary jurisdiction under Section 482 of Cr.P.C.

9. The matter in hand clearly goes to show that a private complaint has been entertained and after recording the deposition of the complainant, the learned Magistrate *prima facie* found that there is material to issue process.

10. An attempt was made by the learned Counsel for the Petitioner to show some material by stating that the same is not published by the Petitioner. Such exercise cannot be gone into under Section 482 of Cr.P.C. It is for the learned Magistrate to go into such an aspect, who found that material exists against the Petitioner to justify the issuance of process.

11. In the above circumstances, no case is made out for interference with the impugned order under Section 482 of Cr.P.C. specifically when there is efficacious and alternate remedy available to the Petitioner. The Petition stands dismissed.

BHARAT P. DESHPANDE, J.

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