



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1204 OF 2023

Naresh Kanayalal Rajwani
Age 62 yrs. Occu – Business,
Having address at W.I.T.Building,
1st Floor, 2-A Dharavi Road, Mahim (East),
Mumbai – 400 017.
Aadhar Card No.7122-0329-5170

... Petitioner

versus

1. The State of Maharashtra
through Public Prosecutor
2. Madhukar Bayaji Thaval
An Adult, Age 69 years,
In Indian Inhabitant Occu – Retired
as Asstt. Commissioner of Police,
Mumbai, Residing at Flat No.301,
A Wing, Plot – 18/C, Bhoj-Mahal
Co-op. Hsg. Soc. Ltd., Shiv
Puri Colony,
Sion-Trombay Road, Chembur,
Mumbai – 400 074.

... Respondents

Dr. Abhinav Chandrachud with Ms. Snehal Chaudhari i/by Maharashtra Law Associates, for Petitioner.

Mrs. Geeta P. Mulekar, APP for State.

Mr. Sushant Jadhwar, for Respondent No.2.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 6 FEBRUARY 2024

PRONOUNCED ON : 9 MAY 2024

ORDER :

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally.

2. The Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order dated 9 December 2022, passed by the learned Additional Sessions Judge, Mumbai, in Criminal Revision Application No.354 of 2021 whereby the revision application preferred by the Petitioner against the order dated 27 February 2019 passed by the Additional Chief Metropolitan Magistrate, 11th Court, Kurla, in Complaint SS/1335 of 2018 for issue of process against the Petitioner for an offence punishable under Section 500 of the Indian Penal Code, came to be dismissed.

3. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arraigned before the learned Magistrate in Complaint SS/1335 of 2018.

4. Shorn of superfluities, the background facts can be stated as under :

4.1 The complainant was working in Maharashtra State Police from 1979 to 2009. While the complainant was posted as Police Sub-Inspector at Chembur Police Station, he became acquainted with the accused-Petitioner, who was dealing as a real estate agent. In the year 2011, the complainant, his wife and brother entered into transaction to purchase shops from the accused. Disputes arose between the parties.

The complainant alleged, the accused resorted to various false and vexatious proceedings and addressed communication to the superior of the complainant, including Anti Corruption Bureau (ACB) that the complainant had amassed wealth grossly disproportionate to the complainant's known source of income.

4.2 The accused also preferred a Writ Petition being No.4457 of 2016 seeking directions to the jurisdictional police to register FIR on the basis of the complaint lodged by the accused and also register an offence against the complainant under the provisions of the Prevention of Corruption Act, 1988. Eventually, the said Petition came to be dismissed by an order dated 23 March 2017. The ACB did conduct an open inquiry on the basis of the complaint of the accused and recorded a finding that the assets of the accused were not disproportionate to his known source of income and, hence, closed the inquiry. The complainant was informed vide letter dated 21 March 2018 about the said closure of the inquiry.

4.3 The complainant alleged, on 18 May 2018 at about 8.30 p.m., the accused came to Poonam Medical and General Stores, run by the complainant, and shouted at the complainant in the presence of few known persons and public, 2-3 times, that “तु एसीबी मधून सुटला तरी तू चिटर आहे, लाचखोर आहे” which translates as “Even if you are exonerated by the ACB, you are a cheater and corrupt”. The complainant's workers and many customers were present in the said shop when the accused made the alleged defamatory imputation with intent to harm the reputation of

the complainant.

4.4 The complainant, thus, lodged a complaint for an offence punishable under Section 500 of the Penal Code. The learned Magistrate recorded verification statement of the complainant and examined witnesses, and, thereafter, by an order dated 27 February 2019, issued process against the accused for an offence punishable under Section 500 of the IPC, as the accused prima facie made a defamatory imputation with intent to harm the reputation of the complainant.

4.5 Being aggrieved, the Petitioner preferred revision before the learned Sessions Judge. By the impugned order dated 9 December 2022 in Revision Application No.354 of 2021, the learned Additional Sessions Judge found no ground to interfere with the impugned order as the order passed by the learned Magistrate did not suffer from any jurisdictional error or defect of procedure and there was, prima facie, material to show that the ingredients of the offence punishable under Section 500 of IPC were satisfied.

4.6 Being further aggrieved, the Petitioner has invoked the writ jurisdiction of this Court.

5. Dr. Chandrachud, learned Counsel for the Petitioner – accused, submitted that the learned Magistrate as well as the learned Additional Sessions Judge have proceeded on an incorrect premise. The utterances allegedly made by the Petitioner, even if taken at par, do not indicate that the alleged imputation was made

with intent to harm the reputation of the complainant. An endeavour was made to draw home the point that, on the one hand, the imputation was bonafide in the sense that the complainant had prefaced the imputation with the fact the complainant was exonerated by ACB. Thus, there was no intent to suppress the fact that the complainant was exonerated by the ACB. The latter part of the alleged imputation that, 'the complainant was cheater and corrupt', cannot be construed to be *per se* defamatory as it was, at best, abusive. Hurling of abuses without intent to harm the reputation of the person to whom the abuses are heaped does not constitute defamation.

6. To bolster up these submissions, Dr. Chandrachud placed reliance on a decision of Karnataka High Court in the case of **Jayappa versus Shamegowda**¹, a decision of Madhya Pradesh High Court in the case of **Mst. Ramdhara and Anr. V/s. Mst. Phulwatibai**² and a decision of Himachal Pradesh High Court in the case of **Prem Pal Singh and Ors. V/s. Mohan Lal**³.

7. Mrs. Geeta Mulekar, learned APP, however, supported the impugned orders.

8. The learned Counsel for the complainant – Respondent No.2 submitted that a clear case of defamation is made out. In fact, the reiteration of the imputation despite the accused having failed before the High Court and the ACB having conveyed

1 ILR 1985 Karnataka 680

2 ILR 1969 page 474 MP Series

3 1981 SCC Online HP 35

post inquiry that there was no substance in the allegations of acquisition of disproportionate assets, showcases a clear intent to harm the reputation of the complainant. Therefore, no interference is warranted in the impugned orders, submitted Mr. Jadhwar.

9. I have given anxious consideration to the rival submissions and also perused the allegations in the complaint, documents annexed thereto and the material on record. At the outset, it is necessary to note that the fact that the accused had made allegedly defamatory imputation, as such, has not been put in contest.

10. Dr. Chandrachud made an earnest endeavour to urge that, even if the Court proceeds on the aforesaid premise, the said utterances do not have defamatory tendency. A concerted effort was made to draw a distinction between the abuses and defamatory imputation. The fact that the accused had used abusive language, according to Dr. Chandrachud, does not necessarily imply that the intent of the accused was to tarnish the reputation of the complainant as there is an essential distinction between mere abuses and defamatory imputation.

11. Section 499 of the Penal Code defines defamation as under :

“499. Defamation – 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.

Explanation 1 – It may amount to defamation to impute anything to a

deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2 – It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3 – An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4 – No imputation is said to harm a person's 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 the loathsome state, or in a state generally considered as disgraceful.”

12. On a plain reading, the following ingredients of defamation can be culled out. First, there must be an imputation. Second, such imputation must have been made with intent of harming or knowing or having reason to believe that it will harm the reputation of the person in respect of whom it is made. Third, the case shall not fall in any of the exceptions enumerated in Section 499.

13. In the case of **Jeffrey J. Diermeier and Anr. V/s. State of West Bengal and Anr.**⁴ the Supreme Court expounded as to what constitutes defamation under Section 499 of the Code. The observations in paragraphs 29 and 30 read as under :

“29. To constitute "defamation" under Section 499 of the IPC, there must be an imputation and such imputation must have been made with intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. In essence, the offence of defamation is the harm caused to the reputation of a person. It

4 (2010) 6 SCC 243

would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged.

30. However, as per Explanation 4 to the Section, no imputation is said to harm a person's reputation, unless that imputation directly or indirectly 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, in the estimation of others 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."

14. In the light of the aforesaid nature of the offence of defamation, at this stage, when the Court proceeds on the premise that the imputation (extracted above) was, indeed, made, the question as to whether the said imputation would fall within the dragnet of the offence punishable under Section 500 of the Penal Code, warrants consideration.

15. Few facts which are, by and large, admitted need to be noted before dealing with the submissions canvassed by Dr. Chandrachud. First and foremost, the dispute arose between the complainant and accused on account of certain transactions in immovable properties. Incontrovertibly, the accused had lodged a report with the police and has also lodged a report with the ACB. The accused had also preferred Writ Petition No.4457 of 2016 seeking directions against the State to decide the accused's complaint dated 1 November 2012 and register the offence against the

complainant under the provisions of the Corruption Act.

16. By an order dated 23 March 2017, the said Petition came to be dismissed by the Division Bench opining, inter alia, that at the instance of the Petitioner-accused who had a grudge against the complainant-Respondent No.2, the Court was not inclined to entertain the said Petition.

17. As noted above, ACB, post open inquiry, decided to close the inquiry and the said fact was informed to the complainant on 21 March 2018. Lastly, from the very imputation, extracted above, it becomes abundantly clear that the accused knew that the complainant was exonerated by ACB. The pivotal question that arises is, as to whether reiteration of imputation that the complainant was 'cheater and corrupt', prima facie amounts to defamation.

18. In the case of Jayappa (supra), the Division Bench of the Karnataka High Court enunciated that before a person is found guilty of the offence of defamation punishable under Section 500 I.P.C., not only the prosecution has to prove the imputations, verbal or written, made by the accused, but it also has to prove that the accused made such defamatory imputations with intention of defaming, ridiculing or undermining the reputation of the person complaining of the defamation. Although the words attributed to the accused in the said case were abusive in nature, the Court ought to have arrived at a conclusion whether the imputations were intended to be literally conveyed and they were only hurled as abuses, there must be something more

than mere abuses from which it could be possible to infer that the imputations were made with such intention of defaming directly or indirectly the person complaining of. In the absence of any such proof or material, however vituperative the abuses may be, the abuses by themselves may not be sufficient to constitute an offence of defamation punishable under S. 500, I.P.C.

19. In the case of **Mst. Ramdhara and Anr. V/s. Mst. Phulwatibai (supra)**, the Madhya Pradesh High Court observed, inter alia, as under :

“In the present case, if the defendants had merely uttered the word “chhinal”, I would have held that the word did not convey its literal meaning, that is, a woman of easy virtue, but was only a vulgar abuse, which is not uncommon in villages when women quarrel among themselves. Mere vulgar abuse, which does not tend to lower a person addressed in the estimation of others or to bring him into obloquy, contempt or ridicule, does not amount to defamation. In such a case, the abuse is uttered merely to put an affront upon the feeling of the person abused, or as an insult to his dignity or self-respect without other persons knowing of it or without producing such an impression in their mind as its natural meaning would convey. But where words are uttered in circumstances tending to lower the person addressed in the estimation of the people present and to bring him into ridicule or contempt, they will constitute defamation and will be actionable.”

20. In **Prem Pal Singh and Ors. V/s. Mohan Lal (supra)**, a learned Single Judge of the Himachal Pradesh High Court enunciated that the imputation within the meaning of Section 499 of the IPC means accusation against a person and it implies an allegation of fact and not merely as a term of abuse.

21. The aforesaid pronouncements mark out the distinction between the defamatory imputation and abuses. Mere use of abusive terms without intent to convey that the person abused, in fact, fits the abusive character may not by itself be defamation. The imputation is, therefore, required to be considered in the light of the relevant position of the parties, the situation in their lives and the attendant circumstances in which those imputations were made.

22. In the case at hand, however, I find it rather difficult to accede to the submission of Dr. Chandrachud that the imputation attributed to the accused properly falls within the sphere of an abusive phrase. An endeavour of Dr. Chandrachud to urge that the reference to the fact that the complainant had been exonerated by ACB indicates that the accused made a full disclosure and yet reiterated his position that the complainant was cheater and corrupt, does not advance the cause of the submission. On the contrary, it indicates that the accused knew that the concerned investigating authority found no substance in the allegations, and, yet the accused made the said imputation.

23. In the backdrop of the surrounding circumstances, especially the dismissal of the writ petition and the exoneration by the ACB, the imputation can only be said to have, prima facie, been made with intent to harm the reputation of the complainant, thus, satisfying the criteria mentioned in S. 499. Prima facie, the element of good faith was non-existent. To utter that a public servant was cheater and corrupt,

can hardly be said to be a form of abuse. Instead, if made recklessly and sans good faith such imputation, prima facie, constitutes defamation.

24. A useful reference in this context can be made to a decision of the Supreme Court in the case of **P.S.Meherhomji V/s. K.T.Vijay Kumar and Ors.**⁵, wherein the Supreme Court observed that in a complaint alleging offence under Section 499 of IPC, if on consideration of allegations, the complaint is supported by a statement of the complainant on oath and the necessary ingredients of the offences are disclosed. The High Court should not normally interfere with the order taking cognizance.

25. In the case at hand, the allegations in the complaint are supported by the sworn statement of the complainant as well as the evidence of a witness in whose presence defamatory imputation was made by the accused.

26. The upshot of aforesaid consideration is that no fault can be found with the order passed by the learned Magistrate of issue of process against the accused for the offence punishable under Section 500 of the Penal Code. The learned Additional Sessions Judge justifiably declined to interfere with the order passed by the learned Magistrate. Thus, the Petition deserves to be dismissed.

27. Hence, the following order :

5 (2015) 1 SCC 788

ORDER

- (i) The Writ Petition stands dismissed.
- (ii) Rule discharged.

(N.J.JAMADAR, J.)