



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

CRIMINAL WRIT PETITION NO.475 OF 2024

Sau. Ashwini Gajanan Pawar

(Vs.)

State of Maharashtra and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
orders.

Court's or Judge's

and Registrar's Orders.

Shri R.D. Karode, Advocate for the petitioner.

Ms Ritu Sharma, APP for respondent No.1/State.

Mr. S.K. Wankhade, Advocate for respondent No.2

CORAM : G.A. SANAP, J.

DATE : 14.08.2024.

Heard learned Advocates for the parties.

Perused the record and proceedings.

2. In this criminal writ petition, the challenge is to the judgment and order dated 23.04.2024 passed by the learned Additional Sessions Judge, Khamgaon, District Buldhana whereby the learned Judge dismissed the revision application, filed by the petitioner, challenging the order of issuance of

process against her dated 04.10.2023 passed by the learned Judicial Magistrate, First Class, Khamgaon for the offence punishable under Section 500 of the Indian Penal Code (for short, “the I.P.C.”).

3. The complainant/respondent No.2 is a retired Military Officer. He is resident of Amdapur, Tahsil-Chikhli, District Buldhana. On the report of the petitioner, the crime bearing No.225/2022 was registered against the son of the respondent No.2, with Khamgaon Police Station for the offence punishable under Section 376 of the I.P.C. In the said crime, the son of respondent No.2 was arrested. He applied for bail. In the said bail application, the petitioner filed the affidavit and opposed the said bail application. It is stated in the complaint filed by respondent No.2 that while opposing the bail application, apart from commenting on the conduct of the son, the petitioner made false and frivolous allegations against him. The petitioner alleged in her affidavit that not only the accused in the said case but also, his father, respondent No.2, was involved in

similar offences. It was categorically stated in the affidavit that the respondent No.2 is residing with a woman of another religion. The allegation and the imputation are false and frivolous. His son, the accused in the said case, disclosed this fact to him. He, thereafter, obtained the certified copy of the application. He initially lodged the report with the police. He filed an application under Section 156 (3) of the Cr.P.C. before the Magistrate. However, the said application was rejected. Respondent No.2, thereafter, filed a complaint against the petitioner in the Court of Judicial Magistrate First Class, Khamgaon for commission of an offence under Section 500 of the I.P.C.

4. Before issuance of the process the complainant examined himself. Similarly, he examined three more witnesses in support of his contention. Learned Magistrate, on going through the complaint and the evidence adduced, was satisfied that the offence of defamation against the petitioner was made out and therefore, issued process

against the petitioner. The petitioner challenged this order by filing revision before the learned Additional Sessions Judge, Khamgaon. Learned Additional Sessions Judge, vide order dated 23.04.2024, dismissed the revision application holding that the material on record is sufficient to make out the basic ingredients of the offence of defamation.

5. Learned Advocate for the petitioner submitted that in this case the ninth exception to Section 499 of the I.P.C. would get attracted. Learned Advocate submitted that the alleged statement was made on affidavit in a judicial proceeding. It was not made public. Learned Advocate further submitted that said statement was made to oppose the bail application of the son of respondent No.2, in good faith for protection of her interest. Learned Advocate submitted that since the imputation was made in good faith to protect her interest, the ninth exception would get attracted. In order to seek support to his submission, he has placed reliance on the following three judgments.

i] The peoples Co-operative Bank Ltd. & Anr. .v/s. M/s. Kemo Industries and Allied Product Pachora Dist. Jalgaon and ors., reported at, 2006 ALL MR (Cri.) 2509

ii] Manoharrao S/o. Gangakishan Arlikar and anr. .v/s. The State of Maharashtra & Anr., reported at, 2016 ALL MR (Cri.) 3034.

iii] Sushila Mahadeo Chaudhari .v/s. The State of Maharashtra and anr., reported at, 2017 ALL MR (Cri.) 864

Learned Advocate further submitted that the learned Magistrate has not recorded the detailed reasons. The order does not reflect the application of mind. The order passed without recording satisfaction is non-est. In order to support his submission, he has relied upon the decision in the case of *Lalankumar Singh and others .v/s. State of Maharashtra, reported at, 2022 SCC OnLine SC 1383.*

6. Learned Advocate for respondent No.2 submitted that ninth exception to Section 499 would not get attracted in this case. The respondent No.2 was not in any manner concerned with the crime registered against his son on the report of the petitioner. Learned Advocate submitted that the petitioner was required to protect her interest by making allegations against the son of respondent No.2 and not the respondent No.2. Learned Advocate took me through the record and pointed out that there is no allegation of any overact having been committed by respondent No.2 against the petitioner. Learned Advocate submitted that the learned Magistrate has taken into consideration the basic facts set out in the complaint and the evidence of other witnesses examined by respondent No.2. Learned Advocate took me through the order passed by the learned Magistrate and submitted that the learned Magistrate in so many words, has recorded his satisfaction about the disclosure of the offence punishable under Section 500 of the I.P.C.

7. In my view, the facts of this case are required to be born in mind for the purpose of addressing the submissions made by relying upon the ninth exception to Section 499 of the I.P.C. Admittedly, respondent No.2 was not concerned with the crime registered against his son by the petitioner. It is not out of place to mention at this stage that the Division Bench of this Court has quashed the crime registered against the son of respondent No.2. There is no dispute about this fact on behalf of the petitioner. The record shows that the order passed by the Division Bench of this Court quashing the crime registered against the son of respondent No.2 was challenged before the Hon'ble Apex Court. The Hon'ble Apex Court summarily dismissed the proceeding filed by the petitioner. It is to be noted that respondent No.2 was not concerned with the said crime. Perusal of the said affidavit would show that no role was attributed to respondent No.2 in any manner in the said crime. It is not stated that after arrest of his son, respondent No.2 in any

manner threatened or pressurized the petitioner. It is seen that the petitioner, while commenting on the conduct and character of the accused in the said crime, made serious imputations on the character and conduct of respondent No.2. At this stage, for the purpose of deciding this petition, it needs to be stated that the statement against respondent No.2 was not necessary and required to protect the interest of the petitioner in the said matter in any manner. The statement was totally unwarranted and made out of context. The petitioner alleged in the reply that not only the son but the father is also possessing the dubious character. It is alleged that he was residing with a woman of another religion. In my view, this statement by itself is sufficient to decide the fate of this proceeding. It cannot be said, at least at this stage, on the basis of the available material that this statement was made in good faith to protect her interest in any manner. In my view, therefore, the judgments relied upon, where it has been held that any imputation made in a good faith for protection of interests by a person would not be a defamation is

not applicable to this case on facts. Therefore, on merits, I do not see any substance in this petition.

8. The next important issue is as to whether the order passed by the learned Magistrate reflects the application of mind or not. I have perused the order passed by the learned Magistrate. Perusal of the order would show that the learned Magistrate has taken into consideration the facts stated in the complaint and facts stated on oath by the complainant as well as by three more witnesses. The learned Magistrate, on the basis of the available material, has recorded his *prima-facie* satisfaction that the offence of defamation is made out. In the case of ***Lalan Kumar (supra)*** the Hon'ble Apex Court has held that criminal prosecution is a serious matter. The Court, before passing an order of issuance of process or summons, is required to satisfy that there are sufficient grounds for proceeding against the accused. The Hon'ble Apex Court has held that the Court, at the stage of issuance of process, is not supposed to record the reasons in detail. It is held

that perusal of the order must reflect the application of mind. It is held that the order without recording the reasons to arrive at a satisfaction cannot be sustained. In my view, on this count also, there is no substance in the submissions. Learned Magistrate has recorded the reasons to arrive at his satisfaction as to the existence of a case against the petitioner. As such, this petition is devoid of merits and it is accordingly **dismissed**.

9. It is made clear that the observations made in this order are for the purpose to decide this writ petition.

10. Criminal Writ Petition stands disposed of, accordingly. Pending applications, if any, also stand disposed of.

JUDGE