

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

Cri.Writ Petition No.1425 of 2025

Subodh Kumar Jaiswal

Age: 62 yrs, Occ: Retd.Director
r/a. A 901, Lotus Enpar Residency
45, Hanuman Lane, Lower Parel,
Mumbai-400013.

... Petitioner.

Vs.

1. James Thomas Godwin
R/a. Flat No.16, 3rd floor
Union House No.2, Mogul
Lane, Off LJ Road, Mahim,
Mumbai-400 016.

2. The State of Maharashtra ... Respondents.

Ms Aishwarya Sharma for the petitioner.
Mr SS Pednekar, APP for respondent/State.
Ms Mayuri Panchal for respondent No.1.

**Coram : R.N.Laddha, J.
Date : 7 May 2025.**

P.C. :

By this petition, the petitioner seeks to invoke the jurisdiction of this Court for quashing and setting aside the complaint bearing CC No.2363/SS/2013 filed by respondent No.1 before the learned Additional Chief Judicial Magistrate, 9th Court, Bandra, Mumbai. The

complaint pertains to alleged offences punishable under Sections 500 read with 34 of the Indian Penal Code (IPC). The petitioner further challenges the order dated 17 July 2013, which was passed in connection with the complaint.

2. A perusal of the material on record indicates that, at the relevant time, the petitioner was the Additional Commissioner of Police (Central region), impleaded as accused No.1, had been directed by the then Commissioner of Police to conduct an enquiry into a complaint received against certain officers attached to the Mahim Police Station. In the course of this enquiry, accused No.3, who was then serving in the capacity of an Assistance Police Inspector (API), made a statement that was duly recorded by the petitioner as an enquiry officer and Additional Commissioner of Police as part of the official proceedings. The substance of this statement was incorporated into the report submitted to the Commissioner of Police in furtherance of official duties. Subsequently, respondent No.1, having obtained a copy of the said report through an application under the Right to Information Act (RTI Act), lodged a complaint alleging that accused No.3 had unnecessarily referred to him and made baseless and

defamatory allegations within the report. According to respondent No.1 such inclusion amounted to defamation. He also contended that the petitioner, the then Additional Commissioner of Police and enquiry officer, failed to record his version of events and did not afford him an opportunity to be heard prior to the submission of the report to the Commissioner of Police.

3. The learned Counsel appearing on behalf of the petitioner, submits that a careful review of the relevant report unequivocally establishes that the original accused No.3 had provided a statement to the petitioner being an enquiry officer. This, it is submitted, was done strictly in the discharge of his official duties. The learned Counsel further contends that pursuant to this internal inquiry, the petitioner, who was serving at the material time as the Additional Commissioner of Police and was tasked to conduct the inquiry, duly forwarded his report to the Commissioner of Police. This action, she asserts, was undertaken as part of the petitioner's official responsibilities and within the scope of his lawful authority. According to the learned Counsel, no offence of defamation can be said to arise in the present case. It is emphasised that the inquiry

report in question was a confidential communication exchanged between two high-ranking officers of the police department- namely, the petitioner and the Commissioner of Police, Mumbai. As such, it was never intended for public dissemination and cannot, under any interpretation, be regarded as a ‘publication’ within the meaning required to constitute the offence of defamation.

4. Ms Sharma, the learned Counsel, further argues that the absence of a valid sanction under Section 197 of the Code of Criminal Procedure, 1973 (CrPC) renders the initiation of criminal proceedings against the petitioner legally unsustainable. She submits that even assuming the allegations made in the complaint to be true, they do not disclose the essential ingredients necessary to constitute the offence of defamation. Consequently, the learned Counsel contends that subjecting the petitioner-a public servant acting within the scope of his official duties-to the ordeal of a criminal trial would not only be unwarranted but would also amount to undue harassment and misuse of the judicial process. In support of her submissions, Ms Sharma places reliance on the decisions of the Hon’ble Supreme Court in

(i) D. Devaraja Vs Owais Sabeer Hussein¹, and (ii) Rajendra & Anr. Vs Nayantara & Anr.²

5. The learned Counsel for respondent No.1 submits that the impugned process order passed by the learned Magistrate is well-reasoned and does not warrant interference. It is contended that the petitioner unjustifiably inserted respondent No.1's name during the course of the inquiry proceedings without any cogent reasoning or factual basis. The report prepared by the petitioner and forwarded to the office of the Commissioner of Police was allegedly compiled without affording respondent No.1 an opportunity to be heard, thereby violating the principles of natural justice. Furthermore, it is submitted that the act of disseminating the inquiry report to the authority constitutes a form of publication. In such circumstances, the unwarranted inclusion of respondent No.1's name without granting him a fair chance to respond or clarify his position is both prejudicial and procedurally improper. It is submitted that this action appears to be a deliberate attempt on the petitioner's part to tarnish the reputation of

¹ AIR 2020 SC 3292.

² 2011 SCC OnLine Bom. 1111.

respondent No.1 before the public and concerned authorities. It is further submitted that the true nature and extent of the petitioner's involvement can only be ascertained during the course of the trial based on the evidence adduced, and any premature conclusions must be avoided.

6. This Court has carefully considered the rival submissions advanced by both parties and examined the material available on record.

7. Under Section 499 of the IPC, which is made punishable under Section 500 of the IPC, the offence of defamation is established when a person makes or publishes any imputation concerning another individual with the intention to harm, or with knowledge or reason to believe that such imputation will harm, the reputation of the person concerned. In the present matter, two principles issues emerged for the Court's consideration : (i) whether the alleged communication/report dated 17 November 2005, along with the statement made during the departmental inquiry proceedings, amount to defamation as defined under Section 499 of the IPC in relation to the petitioner;

and (ii) whether the criminal proceedings initiated for alleged offences punishable under Section 500 of the IPC stand vitiated due to the absence of prior sanction as required under Section 197 of the CrPC, which is mandatory when prosecuting public servants for acts committed in the discharge of their official duties.

8. It is pertinent to note that the original accused No.3 was serving as an Assistant Police Inspector posted at Mahim Police Station, Mumbai, during the relevant period. In the course of a departmental enquiry, he provided a statement to the enquiry officer, who, at that time, was the Additional Commissioner of Police-the petitioner herein, who has also been arrayed as accused No.1 in the complaint. The central issue in the present proceedings revolves around the enquiry report dated 17 November 2005, which respondent No.1-the complainant-alleges to be defamatory in nature. To better appreciate the context of the allegation, the relevant portion of the said enquiry report is extracted below :

“18. API Chandrakant Dajiram Bangar stated that he is working as D.O. and mostly he makes efforts through detection staff to detect property offences. He had not made

enquiries with the accused Alex Anthony Fernandes and his two brothers. The accused Alex Anthony Fernandes and his two brothers were arrested in case of body offence. I.O. of this case PSI Ravaji Santu Waingade was carrying out enquiries with the accused persons. He has, further, stated that one Mr James Godwin was arrested in case of Mahim Police Station who had made false and baseless allegations against him. Now accused Alex Anthony Fernandes is moving around with Mr James Godwin, who might be behind these baseless and false allegations to harass the police. The typed version and language of application are similar to that of the complaints of Mr James Godwin.”

9. Upon a careful examination of the enquiry report dated 17 November 2005, it becomes evident that it primarily incorporates the statement rendered by the original accused No.3 during the course of a departmental enquiry. The report in question constituted an official communication authored by accused No.1-the petitioner in his capacity as the enquiry officer and addressed to the Commissioner of Police. The report essentially documented and conveyed the information furnished by the original accused No.3 in the context of the enquiry proceedings. It is a well-established principle of law that an internal or

official communication, if it is not circulated beyond its intended official purpose or published in a broader context, does not satisfy the requirements of publication under Section 499 of the IPC. For an offence of defamation to be made out, it must be demonstrated that the accused either made or published an imputation concerning a person with the intention to harm, or with knowledge or reason to believe that such imputation would cause harm to the reputation of the person concerned, subject to the recognised exceptions under the Section. In the present case, the impugned communication was limited strictly to an official enquiry and exchanged exclusively between two functionaries within the police department. It was neither published to the public nor communicated beyond the scope of the departmental framework. As such, it retains the character of a confidential official communication, reflecting the petitioner's observations in his official capacity. Further, there is no material on record to suggest that the petitioner had any intention to harm, defame, or injure the reputation of respondent No.1 by making or forwarding the said report.

10. Section 197 of the CrPC bars any Court from taking

cognizance of an offence alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duties, unless prior sanction is obtained from the competent authority. The phrase “official duty” has been interpreted to mean that the act or omission must have a reasonable nexus with the public servant’s official role. While Section 197 does not provide blanket immunity for every action of a public servant, it does extend protection where the alleged conduct is integrally connected with the execution of official duties.

11. In the instant case, there is no dispute that the trial Court has taken cognizance of the alleged offence under Section 500 of the IPC against the petitioner. However, such cognizance could not have been legally taken without securing the requisite sanction from the competent authority, as mandated under Section 197 CrPC. The act of providing a statement or compiling a report as part of a departmental enquiry squarely falls within the domain of the petitioner’s official responsibilities. The allegations made against the petitioner stem directly from his role as an enquiry officer, and there exists a reasonable and proximate connection between the impugned act and the discharge of

his official functions. It is also undisputed that the petitioner did not independently publish and disseminate the contents of the enquiry report to the public, nor was there any demonstrable intent to malign the complainant. Therefore, the initiation of criminal proceedings against the petitioner without prior sanction is legally unsustainable and fraught with significant procedural irregularities.

12. Moreover, a perusal of the impugned order reveals that the learned Magistrate failed to demonstrate any conscious application of mind to either the factual matrix or the legal requirements before taking cognisance of the offence against the petitioner. The order appears to have been passed in a mechanical manner without due consideration of the statutory safeguards and judicial precedents governing such matters.

13. In light of the foregoing, the criminal prosecution initiated against the petitioner in CC No.2363/SS/2013 before the Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai, and the impugned order dated 17 July 2013 passed therein are quashed and set aside.

14. The petition stands disposed of accordingly.

[R. N. Laddha,J.]