



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 957 OF 2024

1. Bhagirathi Saujanya Flat Owners
Welfare Association,
Through its President
N. Rajgopal Nair @ Raju Nair,
Aged about 66 years,
Occ. Retired/Social,
Office at 106, Saujanya Apartment,
Bharat Nagar, Amravati Road, Nagpur.
2. Bhagirathi Saujanya Flat Owners
Welfare Association,
Through its Secretary,
Adv. Arvind Krushnarao Waghmare,
Aged about 45 years,
Occ. Legal Practitioner,
Office at 106, Saujanya Apartment,
Bharat Nagar, Amravati Raod, Nagpur. **PETITIONERS**

Versus

1. M.M. Khaparde (Advocate),
Aged about 36 years,
Occ. Legal Practitioner,
R/o. Telephone Nagar, Dighori,
Umrer Road, Nagpur — 440034.
2. The Hitavada, Through its Editor, Shri
Vijay Phanshikar, Aged major, Office at
Pandit Jawaharlal Nehru Marg,
Nagpur—440012. **RESPONDENTS**

Mr. A.K. Waghmare, Advocate (in person) for the Petitioners.
Mr. R.J. Shukla, Advocate for the Respondents.

CORAM : URMILA JOSHI PHALKE, J.

RESERVED ON : 14th AUGUST, 2025.

PRONOUNCED ON : 12th SEPTEMBER 2025.

ORAL JUDGMENT :-

1. Heard. None present for the Respondent No. 2.

2. **Rule.** Rule made returnable forthwith. Heard finally by the consent of learned Counsel appearing for the respective parties.

3. The present Writ Petition is preferred by the Petitioners challenging the order dated 03.07.2024 passed in Criminal Revision No.46/2023 by the Special Court for Senior Citizens, District Judge-09 & Additional Sessions Judge, Nagpur as well as the order passed by Judicial Magistrate First Class, Court No.1, Nagpur dated 12.01.2023 passed in S.C.C. No.22203/2022.

4. The brief facts which are necessary for the disposal of the present Petition are as follows:-

4(i). The Petitioners are the original Complainants had filed the Criminal Complaint under Sections 190 (1)(a) and 199 (1) read with Section 200 of Code of Criminal Procedure, 1973 for the offence punishable under Sections 500 and 506 of the Indian Penal Code. It is the contention of the Petitioners who are the original Complainants that the Petitioner No.1 is the President of Society namely Bhagirathi Saujanya Flat Owners Welfare Association and the Petitioner No.2 is the Secretary of the said Society. They are authorized to file this complaint by Resolutions dated 05.09.2021 and 12.01.2022.

4(ii). The grievance of the Complainants is that the Respondent No.1 and Respondent No.2 are the formal party. Bhagirathi Saujanya Flat Owners Association is consisting of 28 flats. The said flat owners are the members of the association. The said flat premises is situated in Plot No.3 at Kinkhede layout admeasuring 1823.75 sq. mtrs. The said apartment was of 32 years old. Therefore, members of said housing society have unanimously decided in annual general body meeting

dated 15.08.2020 that entire building be redeveloped by demolition of old structure through suitable and competent builder developer.

4(iii). Then Complainants had published paper publication for calling proposals of redevelopment vide publication dated 03.08.2020 in daily Hitwada. The Respondent No.1 immediately published public notice on 05.08.2021 in the newspaper stating that proposal of redevelopment published by the Complainant No.1 is false. No final decision has taken by all the members of the association regarding redevelopment of Bhagirathi Saujanya Flat Owners Association, Bharatnagar Amravati Road, Nagpur. Disputed plot No.3 and redevelopment scheme thereon is pending before appropriate forum. No builder or person tried to enter into any agreement of redevelopment of Plot No.3 with Complainant No.1/Raju Nair or any other person of the association.

4(iv). Despite of this notice any builder or person finalized the deal of Plot No.3, the same will not be binding on all the members. The notice is given in large of public interest. The said notice was given by the Respondent No.1 on behalf of eight

members of the association. It is the alleged by the Complainants that the Respondent No.1 had not identified the eight members on behalf of whom he published above mentioned notice. Because of publication of said notice prospective builders developers have not contacted the Complainants. So by publishing said public notice Respondent No.1 and eight members have defamed both Complainants. Therefore, they have issued notices to Respondent No.1 on 07.08.2021, 25.08.2021 and 06.09.2021 which are duly served on the Respondent No.1, but Respondent No.1 neither replied to said notice nor furnished the names of the persons on behalf of whom Accused No.1/Respondent No.1 published the notice dated 05.08.2021 in daily newspaper. Therefore, the Complainants have filed complaint against both the Respondents.

4(v). Though the Respondent Nos. 1 and 2 appeared in the proceeding but they failed to file their reply, and therefore, the matter was proceeded without their reply.

4(vi). The learned Magistrate took cognizance of the complaint and below Exh.1 passed an order that the

undertaken redevelopment activity is stuck because of the wrong contentions made in the said notice by Respondent No.1. The image of the association is lowered in general and the contention of the Complainants that the Respondent No.1 is solely responsible for the same, and therefore, the offence is made out.

4(vii). On perusal of the record and by hearing the learned Counsel for the Complainants, the Judicial Magistrate First Class, Nagpur has observed that on a careful and meaningful reading of the complaint, it appears that, something imaginary is put forth by the Complainants. The manner of drafting and presenting the complaint appears to be a clever means to use process of this Court, based on illusions. Even the length of the complaint is increased by way of repeated sentences. The Complainants themselves have stated that they reserve their right to delete the name of Respondent No.1, if/when the names of those 8 persons are revealed. This aspect itself shows that the circumstances brought forward by the Complainants do not appear to be genuine and no real cause of action appears to have arisen to file this, and therefore, dismissed the complaint.

4(viii). Being aggrieved and dissatisfied with the same, the Complainants have preferred the Revision Application before the Additional District and Sessions Judge, Nagpur.

4(ix). The so called resolution authorizing Complainants to redevelop the existing structure of plot No.3 was passed on 15.08.2020 and then after about one year the Complainants had published the proposal for redevelopment, which immediately objected by the Respondent No.1 on behalf of eight members of the association. The Complainants have produced copy of letter given by Smt. Kamal Ashok Sonune, 3 legal heirs of Ashok Shriram Sonune the owner of apartment No.3 on ground floor and apartment No.103 on first floor addressed to both the Complainants that the consent given by their father for redevelopment proposal is withdrawn by them and not binding on them. The said letter is received by Complainants on 18.06.2021.

4(x). By appreciating the entire facts and the law which is determined by various judgments, the learned Additional Sessions Judge held that the Respondent No.1 has published disputed notice to protect the interest of flat owners and all

other interested persons, and therefore, it is covered under Exception 10 of Section 499 of the Indian Penal Code, and therefore, when publication of disputed notice dated 05.08.2021 by Respondent No.1 is not defamatory, then question of issuing process against him does not arise and thus the Revision being devoid of merits it came to be rejected.

4(xi). Being aggrieved and dissatisfied with the same the present Writ Petition is filed by the original Complainants.

5. Heard Mr. Waghmare, learned Counsel for the Petitioners/Complainants, who submitted that the Complainants have produced the certified copy of the complaint on record at Exh.3 alongwith the impugned orders. The Complainants have also produced the certified copy of complaint on record at Exh.3 alongwith impugned orders. The Complainants have also produced xerox copy of public notice published by the Respondent No.1 on record at page No.60, which supports the contention pleaded by Complainants in para No.4 of the complaint. In the said public notice there is specific averment showing that, “this is to inform to the public that, notice proposal for redevelopment published by Mr. Raju Nair in

Hitwada newspaper on 03.08.2021 on behalf of Bhagirathi Saujanya Flat Owners Welfare Association in respect of disputed plot No.3 is false. No final decision is taken yet by all the members of the association regarding redevelopment of Bhagirathi Saujanya apartment, Bharat Nagar, Amravati Road, Nagpur. The disputed plot No.3 and redevelopment scheme thereon is pending before the appropriate forum. No builder or person tried to enter into any agreement of redevelopment of plot No.3 out of Kh.No.12/1, Mouza Futala, Bharat Nagar with Mr. Raju Nair or any other person of the association. In spite of this notice, no builder or person finalized the deal of plot No.3. The same will not be binding on the members. The notice is given in the large of public interest”.

6. He submitted that, this publication of notice itself defamed the Complainants. They have also produced the copies of notice issued by them to Respondent No.1/Advocate Shri. M. M. Khaparde dated 07.08.2021. The Complainants have also produced another notice dated 25.08.2021. By all said notices the Respondent No.1 was asked to submit names of eight persons authorized him to issue public notice dated 05.08.2021.

7. Thus, he submitted that, *prima facie* the Respondent No.1 has not submitted names of eight persons on behalf of whom he published notice dated 05.08.2021 in daily Hitwada and the specific averment in the said minutes that resolution is passed and assembly unanimously resolved to immediate redevelopment of existing building and authorized existing Managing Committee to accept and scrutinize proposal submitted by any developer, builder, promoter with the help of project management consultant and thereafter finalize one viable competent proposal taking into consideration all the demands by the flat owners. Thus, the documents *prima facie* supports the contention mentioned in the complaint about publishing notice dated 03.08.2021 for redevelopment of existing building and disputed notice published by Respondent No.1 dated 05.08.2021.

8. There is specific averment in resolution dated 15.08.2020 that the annual general body has unanimously resolved for redevelopment. Despite of the same, the notice is published by Respondent No.1 contending that no such decision is taken and raised objection by stating reason that plan

produced by the Minark Infraventure is not as per approved by the flat owners and it will cause unliquidated damages to them.

9. He submitted that, the imputations raised by the Respondents harming the reputations of the Complainants, and therefore, the offence is made out against the present Respondents.

10. *Per contra*, Mr. Shukla, learned Counsel for the Respondent No. 1 submitted that, the notice published nowhere harming the reputation of the Complainants. It is published for protecting the interest of flat owners as well as the interest of prospective developers. By publishing said notice, truth about proposal for the redevelopment of building is brought to the knowledge of all the interested persons. There is no intention on the part of the Respondent No. 1 to cause harm to reputation of Complainants. Therefore, merely because the Respondent No.1 has not replied to the notices issued by the Complainants and not disclosed the names of the eight flat owners on behalf of whom he published the said notice, it cannot be inferred that he published defamatory notice against both the Complainants. By considering this aspect, both the

Courts below have rightly rejected the application, and therefore, no interference is called for.

11. The learned Counsel for the Petitioners, placed reliance on *Satyabhash Yeshwant Salgaonkar Vs. Ravindra Madhukar Sawant & Ors., reported in 2015(2) Bom.C.R. (Cri.) 165; X Vs. Y, reported in 2019(1) Bom.C.R. (Cri.) 204; Mohammed Abdulla Khan Vs. Prakash K., 2018(1) Bom.C.R. (Cri.) 399; Laxmikant Vyankatesh Pande Vs. Gokuldas Popatlal Sindhi & Anr., reported in 1976 CRI.L.J. 381.*

12. Considering the pleadings of the Petitioners as well as Respondents, the entire issue revolves that the Respondent No.1 has published disputed notice and whether it amounts to defamation or not.

13. Section 499 of the Indian Penal Code reads 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 a loathsome state, or in a state generally considered as disgraceful.”

14. There are 10 Exceptions given under Section 499 of the Indian Penal Code. As in the present case, the relevant Exception is 10, which read as under:

“Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.— It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.”

15. In light of the above said provision, it is necessary to reproduce the pleadings of the notice, which reads as under:

“That Proposal of Redevelopment published by the Complainant No.1 is false. No final decision has taken yet by all the members of the association regarding redevelopment of Bhagirathi Soujanya Flat Owners Welfare Association, Bharat Nagar, Amrvati Road, Nagpur. The

disputed plot no. 3 & redevelopment scheme there on is pending before appropriate forum. No builder or person try to enter into any agreement of redevelopment of plot no. 3 with Complainant No.1 Mr. Raju Nair or any other person of the association. Inspite of this notice any builder or person finalize the deal of plot No. 3. The same will not be binding on all members. The notice is given in the large of public interest.”

16. The attempt was made by the Complainants to impress upon that the said publication of notice harm the imputation of the Complainants, whereas it is the contention of the Respondents that the notice was published to protect the interest of the flat owners and all the other interested persons. To issue the process, admittedly the Complainants have to show that the imputations concerning the Complainants would have the effect of harming the reputation of the Complainants, due to which, their moral character is lowered down. Thus, the crucial aspect of the matter was that whether the allegations levelled by the Complainants making out the *prima facie* case is against the Respondents and whether the allegations made in the complaint are patently absurd attracting the offence under Section 499 of the Indian Penal Code.

17. The learned Magistrate has conducted the enquiry under Section 202 to ascertain whether the allegations made in

the complaint are intrinsically true and on satisfying himself a reasoned order was passed that there is no *prima facie* case made out against the Respondents.

18. The reasoning given by the learned Magistrate if taken into consideration it shows that, the prayer clause of the application contains prayer to give directions to Accused No.1/Respondent No.1 to disclose the names of alleged 8 members. Such a prayer cannot be granted in this proceeding. Moreover, the Complainant No.2 has not examined himself on oath to support or add force to their theory. No independent witness is examined by the Petitioners to support their case.

19. It is further observed that, the Petitioners themselves have stated that they reserve their right to delete the name of Respondent No.1 and this aspect itself shows that the circumstances brought forward by the Petitioners do not appear to be genuine. No real cause of action appears to have arisen to file this kind of complaint and by considering the overall material on record, he observed that *prima facie case is not made* out for issuing process and as there are no sufficient grounds to proceed and looking to the definition given in

Section 499 of the Indian Penal Code, no offence is made out and rejected the prayer for issuance of process. Thus, the Magistrate has passed the reasoned order.

20. Admittedly, the Respondent No.1 has published disputed notice to protect interest of the flat owners and all other interested persons. The contents of the disputed notice discloses truth about redevelopment proposal. The notice issued by the Respondents definitely covered under the 10th Exception given under Section 499 of the Indian Penal Code, which says that, it is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

21. Thus, it is apparent that, the notice was published in good faith in the large interest of the public, and therefore, no *prima facie* case is made out against the Respondents. As observed by the learned Magistrate that, the contention of the Complainants is not supported as the Complainant No.2 has not entered into the witness box. Even accepting the allegations as

it is in the complaint, admittedly no offence is made out against the present Respondents *prima facie* to show that they have by any means were intending to harm the imputation or the reputation of the Complainants and as observed earlier, the averment in the notice published by the Respondents covers under the 10th Exception given under Section 499 of the Indian Penal Code, and therefore, the order passed by the Judicial Magistrate First Class, Nagpur as well as the Additional Sessions Judge, Nagpur calls no interference.

22. The Writ Petition being devoid of merits is liable to be dismissed. Accordingly, Writ Petition is **dismissed**.

23. Rule is discharged. No costs.

24. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte