

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 54 OF 2016

1. Rajendra s/o Jawaharlalji Darda,
Age: 62 years, Occu: Editor-in-Chief Lokmat,
R/o. Lokmant Bhavan, Jalna Road,
Tq. & Dist. Aurangabad
 2. Sudhir s/o Prabhakarrao Mahajan
(Editor Lokmat),
Age: 50 years, Occu: Journalist,
R/o. Lokmat Bhawan, Jalna Road,
Aurangabad, Tq. & Dist. Aurangabad
 3. Abhimanyu s/o Subhash Kamble,
Age: 39 years, Occu: District
Representative, Lokmat Parbhani,
Lokmat Office, Near Shivaji Statute,
Parbhani
- ...Applicants

versus

1. State of Maharashtra,
Through Police Inspector,
Police Station, Gangakhed,
Tq. Gangakhed, Dist. Parbhani
 2. Sow. Daivashala w/o Gopichand Poul,
Age: 46 years, Occu: Business & Agriculture,
R/o Arunodaya Colony, Gangakhed,
Tq. Gangakhed, Dist. Parbhani,
Through G.P.A. Holder
Deepak s/o Gopichand Poul,
Age: 28 years, Occu: Agriculture & Advocate,
R/o Arunodaya Colony, Gangakhed,
Tq. Gangakhed, Dist. Parbhani
- ...Respondents

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Mr. G. K. Naik Thigle & Mr. L. D. Vakil, Advocates for applicants
Mr. D. V. Tele, A.P.P. for respondent/State
Mr. M.V. Salunke, Advocate h/f Mr. V. D. Saluke, Advocate for
respondent No. 2

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CORAM : N.W. SAMBRE, J.

DATE : 31st MARCH, 2016

ORAL ORDER :

This is an application under Section 482 of Code of Criminal Procedure seeking quashing of the order dated 07/05/2015 passed in Summary Criminal Case No. 65 of 2015 pending on the file of learned Judicial Magistrate, First Class, Gangakhed and also sought quashing of the proceedings in the said complaint.

2. The facts, as are necessary for deciding the present application, are as under :-

On 20/01/2015 the applicants, who are Editor-in-Chief, Journalist and District Correspondent of 'Daily Lokmat', of which news, which according to the respondent, narrates false and incorrect picture, thereby causing defamation of the respondent No.2 prompted him to move an complaint case for the offence punishable under Sections 499, 500 read with Section 34 of the Indian Penal Code. The said complaint came to be moved through Power of Attorney Holder/son of the original complainant Deepak Gopichand Poul. Learned Magistrate recorded the verification of power of attorney holder and ordered issuance of process against the present applicants vide an order dated 07/05/2015. As such, present application.

3. Mr. Thigale, learned Counsel for the applicants, while questioning the legality of the proceedings before learned Magistrate for the offence punishable under Sections 499 and 500 of the Indian Penal Code, would urge that since the applicants-accused persons are residing outside the jurisdiction of the Magistrate, who has taken cognizance by issuing process against them, procedure contemplated under Section 202 of the Code of Criminal Procedure should have been followed. He would submit that the power of attorney holder was not competent to depose in support of the contents of the complaint and the Magistrate ought not to have express satisfaction of making out the case for issuance of process based on the verification of the power of attorney holder. So as to clarify the scheme of Section 202 under the Code of Criminal Procedure, he has invited attention of this Court to the judgment of learned Single Judge of this Court in the matter of ***Bhavika d/o Harish Pawani @ Bhavika w/o Sameer Rajani and others vs. State of Maharashtra and another*** reported in ***2014(11) LJSOFT 11***. According to him, verification in support of complaint, in the scheme under Section 202 of the Code of Criminal Procedure, particularly proviso, is not sufficient to form an opinion about making out satisfactory case for issuance of process without ordering an enquiry. He would rely upon paragraphs-7, 9, 11 and 12 of the said judgment. He has also invited attention of this Court to the Division

Bench judgment delivered by this Court in Criminal Application No. 1809 of 2012 and judgment of learned Single Judge of this Court delivered in Criminal Writ Petition No. 267 of 2011 so as to canvass that the scheme of Section 202 of the Code of Criminal Procedure has undergone drastic change after 2005 Amendment. He would submit that since learned Magistrate has not taken recourse to the amended provisions of Section 202 of the Code of Criminal Procedure, the entire proceedings should be quashed and set aside.

4. Learned Counsel for respondent No. 2, while supporting the order passed by the Magistrate has invited attention of this Court to clause (b) to Section 202 of Code of Criminal Procedure, so as to submit that the Magistrate, after recording the verification, has every power to issue process upon satisfaction of ingredients of Sections 499 and 500 of Indian Penal Code. He would submit that, once from the verification, it depicts that, prima faice offence under the said section is made out, the magistrate was right in issuing the process, which does not call for any interference.

5. Having bestowed my thoughts to the submission made, it is required to be noted that the complaint case in question came to be filed for the offence punishable under Sections 499 and 500 of the Indian Penal Code. The offence of defamation is punishable under Section 499 and 500 of Indian Penal Code, however, the provisions

of Section 199 of Criminal Procedure Code provides for procedure for prosecution of defamation case. Section 199 of the Criminal Procedure Code reads thus :

“(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice- President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub- section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint Under sub- section (2) shall be made by the Public Prosecutor except with the previous sanction-

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub- section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.”

6. From the perusal of Section 199 of Criminal Procedure Code, it could be inferred that the same provides for

mode and manner in which the complaint by the complainant for the offence punishable for defamation, particularly under Section 499 and 500 of Indian Penal Code to be brought into action and dealt with by the Court.

7. Section 202 of Code of Criminal Procedure, prima facie provides for postponement of issuance of process. If the Magistrate on receipt of a complaint, thinks fit may conduct further enquiry either by himself or directs an investigation by an police officer or by such other person as he thinks fit. It also provides for the magistrate, in such eventuality, to take evidence of witnesses on oath. Sufficient support can be taken from the judgment of the Apex Court in the matter of **Adalat Prasad Vs. Rooplal Jindal and others** reported in **(2004) 7 SCC 338**, particularly paragraph Nos. 12 and 13.

8. The proviso to Section 202 of Criminal Procedure Code, particularly clause (b) confers powers on the complainant to depose in support of the complaint. So far as the deposition by the power of attorney holder on behalf of complainant is concerned, but for oral submission, hardly any disqualification under law, is brought to the notice of this Court by the applicants so as to infer that the power of attorney holder on behalf of the

complainant was not qualified to depose in support of verification.

9. It is further required to be noted that the Magistrate, upon recording verification in support of the complaint, particularly in view of the proviso to Section 202 of Criminal Procedure Code and in line with the provisions of Section 199 of Criminal Procedure Code, has every right to proceed ahead with the complaint for commission of offence of defamation punishable under Sections 499 and 500 of Indian Penal Code.

10. It is then required to be taken note of the fact that in case of defamation (libel), once Section 199 of Criminal Procedure Code is taken recourse to, the mode of calling report as provided under Section 202 of Criminal Procedure Code, particularly through Police Officer in relation to the accused, who are residing outside of the jurisdiction of the Magistrate, in my opinion, is uncalled for.

11. Though Mr. Thigle, learned Counsel for the applicants was right in pointing out that the inquiry contemplated under Section 202 of Criminal Procedure Code before issuance of process pursuant to amendment of 2005 is mandatory,

however, it is required to be noted that in a case for the offence punishable under Sections 499 and 500 of Indian Penal Code, the nature of inquiry that is contemplated is not spelt out in Section 199 of Criminal Procedure Code, which provides for procedure to be adopted for initiating prosecution for defamation. Furthermore, just because the accused persons are resident of outside the jurisdiction of the Magistrate, what sort of material through an inquiry should have been considered by Magistrate, from the enquiry to be conducted by the Police Officer in a case for defamation is not highlighted in the present case when the ingredients of Sections 499 and 500 of Indian Penal Code are *prima facie* satisfied before ordering issuance of process by the Magistrate. It is not that the power of Magistrate to issue process is not provided in the Code, but what Section 202 is contemplate, is postponement of issuance of process so as to order an enquiry and get report. The object of ordering an enquiry as provided under Section 202 is not to summon a person in an complaint casually, but to have sufficient material to satisfy about the alleged offence. The object, with which an enquiry is provided under Section 202 of the Code of Criminal Procedure is for the purpose of ascertaining the truthfulness of allegation in the complaint, as is brought before the Magistrate in relation to an accused, who is residing outside the jurisdiction

of the Magistrate. The duty as is vested in Magistrate at the time of recording of preliminary evidence which is taken into account before satisfying itself as regards summoning of an accused, is not to be a mute spectator, but to carefully scrutinise the evidence brought on record. The Apex Court in the matter of **Pepsi Foods Limited & another Vs. Special Judicial Magistrate & others** reported in **(1998) 5 SCC 749** has observed that criminal law cannot be set into motion, as a matter of course in summoning an accused in a criminal case, as same is a serious matter. The Apex Court observed that the Magistrate while summoning an accused must reflect in his order that he has applied his mind to the facts of the case pursuant to the law applicable to such a case. It is required for the Magistrate to examine the nature of allegations made in the complaint and also evidence in support to form satisfaction either for dismissing the complaint under Section 203 of the Code of Criminal Procedure or to evaluate likelihood of success of the complaint in bringing home the charge to the accused.

12. What is contemplated by Section is an enquiry by the Court in a given case.

13. In the background of above, the support drawn by the learned Counsel for the applicants from the judgment of this Court in the matter of ***Bhavika d/o Harish Pawani*** (*supra*) will be of hardly any assistance. All the judgments which are relied upon by the applicants are not dealing with the offence punishable under Sections 499 and 500 of Indian Penal Code, so also the procedure contemplated under Section 199 of Criminal Procedure Code. As such, in my opinion, said judgment is of hardly any assistance.

14. For pursuing prosecution for offence punishable under Sections 499 and 500 of Indian Penal Code fall in the category, for which there is separate support provided from Section 199 of Criminal Procedure Code. Taking cumulative effect of provisions of Section 199, proviso (b) to Section 202 of Criminal Procedure Code, in my opinion, the Magistrate has every right to proceed ahead in the case of defamation to issue summons, once he has satisfied that there is *prima facie* case made out.

15. So far as the case in hand is concerned, it is not in dispute that the defamatory news item was published by the applicants in their newspaper. At least on record there is no

denial to that effect. Based on the same, learned Magistrate has applied its mind to the verification and other material placed on record and proceeded to record his satisfaction vide order impugned dated 07/05/2015, thereby issued process for an offence punishable under Section 500 read with Section 34 of the Indian Penal Code.

16. In the above back ground of facts, particularly when there is no denial as regards publication of news items of the applicants, in my opinion, the submission of the applicants that the order of issuance of process vitiates cause of inquiry under Section 202 of the Code of Criminal Procedure was not ordered is liable to be rejected. The applicants have not demonstrated before this Court as to how the inquiry, if ordered, under Section 202 of the Code of Criminal Procedure would have helped the present applicants or the Magistrate in reaching to the conclusion as to form opinion that there is no sufficient material available on record i.e. publication and imputation therein were rightly taken into account by the Magistrate. In view of above submission of the applicants that inquiry under Section 202 of the Code of Criminal Procedure should have been ordered by the Magistrate is liable to be rejected.

17. In this background, in my opinion, no case for interference is made out. The application, as such fails, stands rejected.

[N.W. SAMBRE, J.]