

ABC 2017 (I) 211 BOM
ACQUITTAL & BAIL CASES
HIGH COURT OF BOMBAY

(Indira K. Jain, J.)

Criminal Application No. 3 of 2013

Decided on 20 January, 2017

Nagpur Bench

SHIKHARCHAND MILAPCHAND SIPANI & ANR. - Appellant(s).

Versus

STATE OF MAHARASHTRA & ANR. - Respondent(s).

Law Covered:- (A) Indian Penal Code, 1860 – Section 499 – Defamation – Prime requirement – Imputation should have been made or published with intention of causing harm – or with the knowledge – or with reasons to believe that the imputation will harm the reputation of such person. (Para 8)

(B) Indian Penal Code, 1860 – Section 44 – Injury – Definition of – Any harm whatever illegally caused to any person, in body, mind, reputation or property. (Para 9)

(C) Indian Penal Code, 1860 – Section 44 – word ‘Injury’ – Scope of – The word includes harm caused to reputation of any person – It also takes into account the harm caused to person's body and mind. (Para 9)

(D) Code of Criminal Procedure, 1973 – Section 204 – Issuance of process – Scope – the section does not mandate the Magistrate to explicitly state the reasons for issuance of summons – It clearly indicates that in the opinion of a Magistrate taking cognizance of an offence, if there is sufficient ground for proceeding, then the summons may be issued. (Para 11)

(E) Code of Criminal Procedure, 1973 – Section 204 – Issuance of process – Scope – The Section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground explicit narration of the same is mandatory. (Para 11)

(F) Code of Criminal Procedure, 1973 – Section 204 – Issuance of process – Nature of – Held, in any case, it is not a mechanical process or a matter of course – The steps taken by the Magistrate u/s 190(1)(a) followed by Sec. 204 should reflect that – Magistrate has applied his mind to the facts and the material placed

on record – & he is satisfied that there is a ground for proceeding further in the matter – by asking the person against whom violation of law is alleged, to appear before the Court. (Para 11)

a

(G) Code of Criminal Procedure, 1973 – Section 204 – Issuance of process – Essential requirement – Held, there must be sufficient indication on the constituting commission of an offence. (Para 12)

b

(H) Code of Criminal Procedure, 1973 – Section 204 & 482 – Issuance of process – Quashing of – Indian Penal Code, 1860 – Section 499 & 500 – Case filed by respondent on the ground of acquittal in a case of cheating filed on complaint of applicant – Process issued by Ld. Magistrate – Held, If acquittal is the only ground to attract the provisions of Sections 499 & 500 then in every case of acquittal such a case can be filed – This cannot be an object and purport of the provisions – there is no indication on application of mind by the learned Magistrate – The order of issuance of process is thus apparently unsustainable in law – Set aside. (Para 12)

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Facts:- Applicants were running a grain shop, respondent no. 2 came to their shop and enquired about the key of electric meter. Applicants were frightened. Respondent no. 2 took an amount of Rs. 1500/- from them and went away. Applicants realized that they were cheated and so report was lodged with the Police. However, the respondent no. 2 was acquitted. After the said acquittal, respondent no. 2 filed a criminal case for defamation, alleging therein that as criminal case was instituted, he was handcuffed and detained in jail. An order of issuance of process was passed by the Ld. Magistrate against the applicants. Aggrieved applicants were before the honourable Bombay High Court in the present application. It was observed by the Court, if acquittal is the only ground to attract the provisions of Sections 499 and 500 of the IPC then in every case of acquittal such a case can be filed. It was held that this cannot be an object and purport of the provisions. The order of issuance of process was quashed and set aside.

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Law of relief:- Only acquittal cannot be a ground to register a case for defamation.

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Held:- Needless to state that under Section 499 of the Indian Penal Code, prime requirement is that the imputation should have been made or published with intention of causing harm or with the knowledge or with reasons to believe that the imputation will harm the reputation of such person. (Para 8)

h

a Section 44 of the Indian Penal Code defines "injury". It denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. The word "injury" includes harm caused to reputation of any person. It also takes into account the harm caused to person's body and mind. (Para 9)

b The next question that remains to be considered is regarding the order of issuance of process. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly indicates that in the opinion of a Magistrate taking cognizance of an offence, if there is sufficient ground for proceeding, then the summons may be issued. This Section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground explicit narration of the same is mandatory. In any case, it is not a mechanical process or a matter of course. The steps taken by the Magistrate under Section 190 (1) (a) followed by Section 204 of the Code should reflect that Magistrate has applied his mind to the facts and the material placed on record and he is satisfied that there is a ground for proceeding further in the matter by asking the person against whom violation of law is alleged, to appear before the Court. (Para 11)

e Having gone through the impugned order, this Court is satisfied that there is no indication of application of mind by the learned Magistrate in issuing process against the applicants. Though no formal or speaking or reasoned order is required at the stage of Section 204 of the code, it is essential that there must be sufficient indication on the constituting commission of an offence. From the aforesaid order, there is no indication on application of mind by the learned Magistrate. If acquittal is the only ground to attract the provisions of Sections 499 and 500 of the Indian Penal Code then in every case of acquittal such a case can be filed. This cannot be an object and purport of the provisions. The order of issuance of process is thus apparently unsustainable in law. (Para 12)

g **Counsel:-** For Appellant(s): Shri S. V. Sirpurkar, Advocate.
For Respondent(s): Shri M. J. Khan, Addl. Public Prosecutor & Ms S. W. Deshpande, Advocate.

JUDGMENT

h **INDIRA JAIN, J.:** - By this application under Section 482 of the Code of Criminal Procedure, applicants are seeking quashing of the

order dated 5.12.2012 passed by the learned Judicial Magistrate, Morshi in Criminal Case No. 72 of 2012.

2. The facts giving rise to the filing of this application may be stated, in nutshell, as under :

Applicant no. 2 is the son of applicant no. 1. In the year 1992, they were running a grain shop. On 18.8.1992, respondent no. 2 came to the shop of the applicants and enquired about the key of electric meter. Applicants were frightened. Respondent no. 2 took an amount of Rs. 1500/- from the applicants and went away.

3. Applicants realized that they were cheated and so report was lodged with the Police Station. Crime No. 227/1992 was registered against respondent no. 2. Charge-sheet was filed and respondent no. 2 was acquitted vide judgment and order dated 29.9.2011.

4. After acquittal, respondent no. 2 filed Criminal Case No. 72 of 2012 before the Judicial Magistrate, First Class, Morshi alleging therein that as criminal case was instituted, he was handcuffed and detained in jail.

5. It appears that verification of respondent no. 2 was recorded by the Magistrate on 6.11.2012 and an order of issuance of process was passed against the applicants on 5.12.2012. Being aggrieved by the said order, applicants have invoked the extraordinary jurisdiction of this Court.

6. Shri S. V. Sirpurkar, learned counsel for applicants submits that having realized that respondent no. 2 cheated the applicants, report was lodged and after due investigation, charge- sheet came to be filed. It is submitted that due to some inconsistencies in the evidence, respondent no. 2 was acquitted and in such a situation, there is no question of offence of defamation being attracted. Learned counsel vehemently argued that to drag a person to a false criminal case after 19 years, is nothing but an abuse of process of law and the trial Court ought not to have taken cognizance and not to have issued the process.

7. Per contra, Ms S. W. Deshpande, learned counsel for respondent no. 2 strenuously submitted that applicants lodged false complaint, respondent no. 2 was required to face prosecution unnecessarily for years together, he was handcuffed and paraded from his house to the Police Station and was required to remain in jail

a for days together for no fault on his part. Learned counsel supports the impugned order of issuance of process and prays to reject the application.

b 8. Needless to state that under Section 499 of the Indian Penal Code, prime requirement is that the imputation should have been made or published with intention of causing harm or with the knowledge or with reasons to believe that the imputation will harm the reputation of such person.

c 9. Section 44 of the Indian Penal Code defines "injury". It denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. The word "injury" includes harm caused to reputation of any person. It also takes into account the harm caused to person's body and mind.

d 10. In the case on hand, it is not in dispute that complaint was lodged by applicant in the year 1992 and after conducting investigation, charge-sheet was filed. Charge under Section 420 of the Indian Penal Code was framed against respondent no. 2 and after full-fledged trial, he came to be acquitted on 29.9.2011. After acquittal, respondent no. 2 filed criminal proceedings and alleged that he was defamed and applicants are responsible for causing harm to his reputation. It is surprising that respondent no. 2 kept mum for 19 years and then realized that injury was caused to his reputation. It is not clear from the averments made in the complaint and verification of the complainant that applicants intended to cause harm to the reputation of respondent no. 2. This a serious drawback in the case of respondent no. 2, which is fatal.

f 11. The next question that remains to be considered is regarding the order of issuance of process. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly indicates that in the opinion of a Magistrate taking cognizance of an offence, if there is sufficient ground for proceeding, then the summons may be issued. This Section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground explicit narration of the same is mandatory. In any case, it is not a mechanical process or a matter of course. The steps taken by the Magistrate under Section 190 (1) (a) followed by Section 204 of the Code should reflect that Magistrate has applied his mind to the facts and the material placed on record and he is satisfied that there is a ground for proceeding further in the matter

by asking the person against whom violation of law is alleged, to appear before the Court. In the present case the order of issuance of process reads as under:-

"नि. १ खालील आदेश

फिर्याददाराचे विद्वान वकिलांचा युक्तिवाद ऐकून अभिलेखावरील कगादपत्राचे अवलोकन केले. अभिलेखावरील नि.फा.ख.क. २४/२००४ मध्ये न्यायनिर्णयाचे अवलोकन केले असता त्यात त्यातील प्रकरणामधील तक्रारदाराने महत्वाची तथ्य लपवून ठेवल्याबाबत न्यायालयाला न्यायनिर्णया दरम्यान अभिक्षण केल्याचे दिसते. सदर प्रकरणातून आरोपी म्हणजेच प्रस्तुत प्रकरणातील फिर्याददार दोषमुक्त झाल्याचे दिसून येते. सदर बाब लक्षात घेता भा.द.वि. कलम ४९९, ५०० सह ३४ चे अरोपाकरीता आदेशिका काढण्याकरीता अभिलेखावर प्रथमदर्शनी पुरावा दिसून येतो. सबब भा.द.वि. कलम ४९९, ५०० सह ३४ चे अरोपाकरीता आरोपी विरुद्ध आदेशिका काढावी. फिर्याददाराने आदेशिका फी भरावी. पुढील दिनांक ०५/०१/२०१३."

12. Having gone through the impugned order, this Court is satisfied that there is no indication of application of mind by the learned Magistrate in issuing process against the applicants. Though no formal or speaking or reasoned order is required at the stage of Section 204 of the code, it is essential that there must be sufficient indication on the constituting commission of an offence. From the aforesaid order, there is no indication on application of mind by the learned Magistrate. If acquittal is the only ground to attract the provisions of Sections 499 and 500 of the Indian Penal Code then in every case of acquittal such a case can be filed. This cannot be an object and purport of the provisions. The order of issuance of process is thus apparently unsustainable in law.

13. In this premise, Criminal Application deserves to be allowed. Hence, the following order:

- (a) Criminal Application (APL) No. 3 of 2013 is allowed.
- (b) Rule is made absolute in terms of prayer clause (1).
- (c) No order as to costs.

Result:- Criminal Application is allowed.