

(2000) 12 BOM CK 0003

In the Bombay High Court

Case No : Criminal Rev. Application No. 188 of 1992

Haribhau Nabaji Pawar

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 15-12-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 499, 500

Citation : (2000) 12 BOM CK 0003

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : V.S. Bedre, for the Appellant; K.S. Patil, Assistant Public Prosecutor for Respondent No. 1 and N.B. Sutyawanshi holding for M.Y. Deshmukh, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard learned Advocates for the parties. Perused records.

2. The criminal revision application arises from the judgment and order dated 25-8-1992 passed by the Sessions Judge, Ahmednagar in Criminal Appeal No. 53/1988. By the impugned order, the lower Appellate Court has dismissed the appeal filed by the petitioner against the judgment and order dated 6-8-1988 passed by the J.M.F.C. Parner in STCC No. 22/1985 whereby the petitioner was convicted for the offence punishable u/s 500 of Indian Penal Code and sentenced to suffer simple imprisonment till rising of the Court and to pay a fine of Rs. 200/- and in default of payment of fine, to undergo 15 days simple imprisonment.

3. The facts in brief are that the petitioner and the respondent No. 2 who was the complainant in the trial Court, both hail from the village of Supa, Taluka Parner. The Gram Panchayat election was scheduled to take place on 27th March, 1984. While the complainant Narayan had his own panel and was contesting election from Ward No. 2, the petitioner/accused on the other hand, had his own panel

and was also contesting said election. One Ranba Nathu Yenare, aged about 70 years was actively involved in the election campaign. On 27-3-1984, a report came to be lodged in the Police Out Post of Supa that dead body of Ranba Nathu Yenare was found floating in the village well and was noticed by one Gulab Shankar Pawar and was informed to the petitioner and, that the said Ranba had, on the previous day evening, accompanied the petitioner while the petitioner was contacting the voters in the village in relation to the election campaign and that he was with the petitioner till 7 O" clock in the evening and thereafter, he was not seen and, therefore, the petitioner was suspecting five persons from the opposite party in the election namely Vilas Bansilal Pipada, Rayachand Chhaganlal Gandhi, Narayan Malharrao Shitole, Shaikh Mahboob Buthanbhai and Bhausahab Vithoba Kale residents of Supa might have committed murder of said Ranba. Pursuant to the said report, investigation was conducted by the Police but, later on investigation was entrusted to C.I.D. branch at Ahmednagar. The investigating authorities submitted report for "B" summary before the learned J.M.F.C, Parner and the same was granted by the Magistrate. It is to be noted that at the relevant time, the petitioner was Sarpanch of the village whereas the respondent No. 2 was the Police Patil. In the Criminal Appeal from the order of granting of "B" summary, the Additional Sessions Judge. Ahmednagar by his order dated 4-12-1989 while setting aside the order granting "B" summary, accepted the report of the investigating machinery and passed order granting "A" summary. Thereafter, the respondent No. 2 filed the present complaint against the petitioner. It appears that initially, the complaint was filed against the petitioner along with the editor of one Daily Sarwamat. However, subsequently, the proceedings came to be dropped against the editor of Sarwamat, and it proceeded against the petitioner alone. The trial Court, after considering the materials on record, held the complainant to have proved that the accused had defamed the former by giving false report to the Police Station on 27-3-1984 and convicted the petitioner u/s 500 of Indian Penal Code as stated above. The appeal preferred against the same could not yield any favourable result for the petitioner and, hence, the present revision petition.

4. The impugned judgments are sought to be challenged mainly on the ground that the materials on record do not disclose any defamation of the respondent No. 2 by the petitioner by lodging report in question as the report merely discloses the name of the respondent No. 2 as the suspect person in relation to the death of Ranba and, therefore, it apparently discloses good faith on the part of the petitioner in lodging the report and both the Courts having failed to consider the same, have acted illegally in convicting the petitioner for the offence punishable u/s 500 Indian Penal Code. The second ground of attack is that in view of the fact that the investigation report was allowed by order granting "A" summary which means the incident was true but there was no evidence collected by the police to establish the guilt of the accused persons, therefore, it apparently discloses the act in good faith on the part of the petitioner in the interest of public good and the case was squarely covered by Ninth Exception to

section 499 of Indian Penal Code and both the Courts having failed to take note of the same, have acted illegally in convicting the petitioner u/s 500, Indian Penal Code. The contentions on behalf of the petitioner are however, seriously disputed on behalf of the respondents. It is submitted that both the Courts below having arrived at concurrent finding on analysis of the evidence on record, there is no case made out for interference of this Court in its revisional jurisdiction.

5. The undisputed fact is that at the relevant time, both the parties were engaged in contesting Village Panchayat election and they belonged to two different groups. It is also an undisputed fact that the petitioner lodged the report dated 27-3-1987 at the Supa Out Post to the effect that dead body of Ranba was found floating in a village well and that the petitioner was suspecting the respondent No. 1 and four other persons being involved in the death of said Ranba. It is also a matter of record that the petitioner was Sarpanch of the village and the respondent No. 2 was Police Patil at the relevant time. There being no dispute about the fact of lodging of report with the Police by the petitioner to the effect that the petitioner was suspecting involvement of the respondent No. 2 in the murder of Ranba and latter having lodged complaint of defamation against the petitioner, and the petitioner in reply having raised the defence in terms of Eighth and Ninth Exceptions to section 499 of Indian Penal Code, that, the accusation were in good faith to the authorised person and imputation were made in good faith by person for protection of his or other's interests, it was primarily for the petitioner to establish the fact that the case was squarely covered by those two Exceptions. Once, the contents of the accusation or imputation were not in dispute and the defence was to the effect that the same were covered by Ninth Exception to section 499, burden was squarely upon the accused to establish that the accusation was in good faith to the lawful authority and the imputation was in good faith for the public good. It was sought to be contended on behalf of the petitioner that the petitioner, in his report, had not made any categorical or positive statement to the effect that the respondent No. 2 had committed the murder of Ranba or that, he was directly responsible for the death of Ranba, but he had only expressed doubt about the involvement of the respondent No. 2 in relation to the death of Ranba. It was also contended that the petitioner being Sarpanch at the relevant, he was first citizen of the village and, therefore, it was his duty to bring to the notice of the police authorities the crime committed in the village, the same having been brought to the notice of the petitioner by one Gulab Pawar. There cannot be any dispute about the proposition that it is the duty of the Sarpanch of the village to act promptly when any villager brings to his notice any fact of commission of any crime in the village and to communicate the same to the police authorities. However, bare perusal of the report to the police authorities lodged by the petitioner in the case in hand, does not disclose mere intimation of the fact of death of Ranba or the fact that his body was found floating in the well or the doubt about the death of Ranba having been as a result of his murder by some persons. The report on the face of it discloses apprehension on the part of the

petitioner about the involvement of the respondent No. 2 in the murder of Ranba. The report also discloses the fact that Ranba was moving in the village along with the petitioner till about 7 O'clock in the evening of previous day and that, thereafter, he was not seen in the village and as the five persons including the respondent No. 2 belonged to the opposite party in the election, the petitioner was suspecting involvement of the respondent No. 2 in the murder of Ranba. Apparently, therefore, the report discloses allegation of murder of Ranba, involvement of respondent No. 2 in the said murder as well as the murder being on account of Ranba being belonging to the group of the petitioner and the respondent No. 2 being belonging to the opposite group in the election. On the face of it, the report, therefore, nowhere discloses either good faith or the same being in public good. On the contrary, once it is not in dispute that the petitioner and the respondent No. 2 were members of two different groups involved in election campaign against each other and the person who is stated to have been murdered was of the group of the petitioner, whereas the names disclosed as suspects were of opposite side group, it is difficult to believe that the alleged accusation was either in good faith or for public good as is sought to be alleged by the petitioner.

6. As rightly submitted by the learned Advocate for the respondent No. 2, there had been no attempt on the part of the petitioner during the course of trial to produce any evidence in support of his claim about the good faith or public good so as to avail the benefit of Eighth and Ninth Exceptions to section 499 of Indian Penal Code and the same is apparent from the analysis of the evidence by both the Courts below.

7. Much reliance was sought to be placed on the order of grant of "A" summary by the Additional Sessions Judge in support of the contention that the same discloses good faith on the part of the petitioner in lodging the said report suspecting the respondent No. 2 as having involved in the murder of Ranba. It was contended that since "A" summary means incident is true but the evidence could not be collected by the police, the petitioner could not be blamed for the lapse on the part of the police authorities in collecting the necessary evidence in support of the accusation made by the petitioner in the said report. Indeed, the learned Sessions Judge while referring to the orders of grant of "A" summary and "B" summary has referred to the meaning of those expressions. Accordingly, grant of "B" summary is stated to mean that the report lodged was false whereas "A" summary is stated to imply that the incident is true but the evidence could not be collected. It is however, not known as to from where the learned Sessions Judge could derive the said meaning of said summary orders. The Criminal Manual issued by our High Court in the clause 24 of Chapter I makes detail reference to such summary orders, Sub-clause (5) of Clause 24 reads thus :-

(5) The Criminal cases should be classified as follows :-

Class "A" cases. - The cases which are (i) "TRUE" and (ii) wherein an accused is tried and in the absence of conclusive evidence, is acquitted.

Class "B" cases, - Wherein no offence has been committed at all either by the accused or by any one else, but wherein the complaint is found to be "false and maliciously false".

Class "C cases, - Wherein no offence has been committed at all either by the accused or by any one else, but wherein the case is found to be "neither true nor false" or "false but not maliciously false".

"Non-cognizable" Cases,- The cases, in which the accused are convicted for non-cognizable offences, should be classed as "Non-Cognizable". The cases, in which the police report discloses commission of only non-cognizable offences, should also be classed as "Non-Cognizable."

8. The above provisions of law in the Criminal Manual, therefore, clearly disclose that when an order is made for "A" summary, it means that though the cases are true, there is no conclusive evidence against the person accused of commission of offence whereas in case of grant of "B" summary, it means that no offence was committed at all either by the accused or any one else and the complaint was totally false. In cases where no offence is committed either by the accused or any one else but, wherein case is found to be "neither true nor false" the same is to be classified as "C summary. Undisputedly, the learned Additional Sessions Judge in Criminal Appeal, while setting aside the order of grant of "B" summary, had granted "A" summary in relation to the investigation carried out pursuant to the report lodged by the petitioner. Therefore, it means that though the fact of death of Ranba reported was true, there was no evidence against the persons named in the report as being involved in the murder of Ranba. From that, no conclusion can be drawn that the police had failed to collect the evidence against respondent No. 2 for his alleged involvement in the murder of Ranba. The finding in that regard arrived at by the learned Sessions Judge, therefore, is totally contrary to the clause 24(5) of the Criminal Manual issued by this Court. Obviously, the said finding was arrived at without considering the provisions of clause 24(5) of the Criminal Manual. The entire argument of the petitioner regarding "good faith" in the accusation and "public good" behind imputation made against the respondent No. 2 in the report being based on the finding of the learned Sessions Judge that "A" summary implies the incident being true but the evidence could not be collected by the police and the said finding itself being found to be totally devoid of substance, the entire argument falls flat to the ground.

9. A lot of grievance was made about the finding arrived at by the trial Court about certain admissions by the petitioner in the statement u/s 313 of Criminal Procedure Code. Irrespective of the said admissions, the analysis of the materials on record by both the Courts below discloses that the fact about the report having been lodged by the petitioner has been fully established by the prosecution and that, it was the case of the petitioner himself in defence that the accusation were made in good faith and the imputations were for public good and, therefore, the petitioner was entitled for the benefit of Eighth and Ninth

Exceptions to section 499 of Indian Penal Code, as already observed above, the burden was on the petitioner to establish the said defence, which the petitioner has failed and hence, no fault can be found with the Courts below in convicting the petitioner for offence punishable u/s 500 of Indian Penal Code and, therefore, there being no case made out for interference, the revision application fails and accordingly, the same hereby dismissed. Bail bonds stand cancelled. Rule is discharged.