

(2018) 02 BOM CK 0132
In the Bombay High Court
Case No : 15 OF 2018

Shri Arun D. Naik & Ors.

APPELLANT

Vs

Shri Suresh Narayan Salgaonkar & Ors.

RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

[Indian Penal Code, 1860](#), [Section 500](#),
[Section 499](#) - Punishment for defamation - Defamation

Citation : (2018) 02 BOM CK 0132

Hon'ble Judges : C. V. Bhadang

Bench : Single Bench

Advocate : S. Naik, M. Amonkar, P. Faldesdsai

Judgement

1. Rule, made returnable forthwith. Shri Amonkar, the learned counsel waives service for the contesting respondent nos. 1 to 4. Heard finally by consent of parties.

2. The respondent nos. 1 to 4 have filed a complaint against the petitioners alleging commission of offence under section 499 r/w 500 of I.P.C. It appears that the learned Magistrate after recording the verification passed an order dated 14/10/2016 issuing process against the petitioners. That order was challenged by the petitioners before the learned Sessions Judge in Criminal Revision application no.116/2016 which was partly allowed on 10/3/2017 and the matter was remanded back to the learned Magistrate for deciding the complaint in accordance with law. The learned Sessions Judge had found that the order dated 14/10/2016 was a non speaking order.

3. The learned counsel for the petitioner points out that after the judgment and order dated 10/3/2017 passed by the Sessions Judge, the magistrate without complying with the said direction had issued non bailable warrant which was subsequently cancelled. However, it is pointed out that the learned Magistrate has passed a similar order of issuance of process on 3/11/2017 and 21/11/2017 which are both orders merely recorded in the roznama.

4. On hearing the learned counsel for the parties and on perusal of the record, it appears that the learned Magistrate has failed to comply with the order passed by the learned Sessions Judge. The learned Sessions Judge has rightly found that though elaborate and a detailed order is not contemplated at the stage of issuance of process, the order issuing process is not an empty formality. The order should demonstrate that the Magistrate had applied mind to the allegations in the complaint, the verification and any other documentary evidence produced by the complainant. It is trite that the order of issuance of process has serious consequences and it being a judicial order amenable to challenge before the superior court should contain at least some reasons. In the peculiar circumstances of the case, the petition is allowed. The impugned orders dated 3/11/2017 and 21/11/2017 are hereby set aside. The learned Magistrate shall pass appropriate order on the complaint in accordance with the direction of the learned Sessions Judge. Rival contentions of the parties are left open. Rule is made absolute in the aforesaid terms.