IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2032 OF 2009

1. Vijay Jawaharlalji Darda,
Age- 58 years, Occu- Business,
R/o Lokmat Bhavan,
Nagpur.

2. Rajendra Jawaharlalji Darda,
Age- 56 years, Occu- Business,
R/o Lokmat Bhavan,
Nagpur.

3. Sudhir Prabhakar Mahajan,
Age- 50 years, Occu- Service,
R/o 11, Akshada Apartments,
Aadarsha Nagar, Jalgaon.

4. Pramod Bhimsing Patil,
Age- 49 years, Occu- Service,
R/o Kasoda, Tq.. Erandol,
Dist. Jalgaon. … **APPLICANTS**

Versus

1. State of Maharashtra

2. Vijay Bapu Patil,
Age 40 years, Occ. Nil,
R/o Shop No.49, Ambedkar Market,
Jalgaon. … **RESPONDENT**

...
Advocate for Applicants : Mr. Satyajit S. Bora.
A.P.P. for Respondent/State : Mr. B.V. Virdhe.
Advocate for Respondent no.2: Mr. Vijay B. Patil.
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CORAM : MANGESH S. PATIL, J.
RESERVED ON: 04.09.2019
PRONOUNCED ON: 04.10.2019

JUDGMENT :-

The applicants are invoking the powers of this Court under Section 482 of the Code of Criminal Procedure and under Article 226 and 227 of the Constitution of India for quashing the proceeding bearing S.C.C. No.2223 of 2008 lodged by the respondent no.2 for the offence punishable under Section 500 of the Indian Penal Code in respect of a news item published by them on 11.07.2008 in their news paper 'Lokmat'. The applicant no.1 is the Chairman, applicant no.2 is the Chief Editor, applicant no.3 is the Editor and the applicant no.4 is the reporter from village Kasoda Taluka Erandol, District Jalgaon.

2. The respondent no.2 filed a private complaint in the Court of the Chief Judicial Magistrate, Jalgaon alleging that in 'Lokmat' dated 11.07.2008 a news item was published on the front page under the caption '*Narbali cha pryatna*' (Attempt at Human Sacrifice) with a sub heading '*Jalu Gramsthanche Madtine Vachale Balkache Pran*' (A Child survives death scare because of alertness of Jalu villagers). The respondent no.2 claimed to be a social worker and a Founder President of Akhil Bhartiya Rajarshree Shahu Brigade, Jalgaon, which has been registered as a union at Nashik. There are number of

branches of the organization through out the State of Maharashtra. He alleged that under above caption a news was published mentioning that the respondent no.2 and ten members of his organization were taken to the police station on 10.07.2008. They were in police station till 11.07.2008 still the police could not collect any evidence and did not register any crime. In spite of that the news item was published. This was done by the applicants with intent to harm his reputation and the reputation of his organization. As a result of such a news item many persons started spreading rumours and started questioning him about the contents of the news item. He is defamed. He has been put to disrepute. He thereafter alleged that on 17.07.2008 he sent a notice to the applicants through his advocate and demanded the particulars on the basis of which the news item was published. However they did not respond and therefore they were liable to be punished. The learned Magistrate recorded the statement under verification and by the order dated 28.08.2008 directed the process to be issued.

3. The learned advocate for the applicants submits that it is a fact that a news item was published as was alleged on 11.07.2008 in the news paper 'Lokmat' (Exhibit-C). There is no question about disputing this fact and the news item is very well there to be read and must have been read by many persons. However, according to the learned advocate, what was published

was merely a report about the incident and no opinion was expressed. It was a truthful reporting of an incident wherein the respondent no.2 and his associates were indeed found moving in the village as a group with a boy named in the news item. The villagers suspected that the child was being carried by these people for sacrifice and one human skull was found. The persons were accosted by the villagers. The villagers assaulted them and took them to police station and the process of registering crime was going on till late in the night and Sub Inspector Khan of Bhadgaon was inquiring into it. He would further submit that it was a candid reporting in as much as even the version of the respondent and his associates to police that they had come there for a party was also mentioned in the news item.

4. The learned advocate would submit that further inquiry by the applicant no.4 with the police concerned revealed that indeed the incident was true. The respondent no.2 and his associates were assaulted by the villagers and were produced before the police. The boy was with them aged between 8-10 years and the villagers perceived that the boy was being taken for sacrifice. The matter was inquired into by Sub-Inspector Farooq Khan and on verification it was transpired that it was a matter of misunderstanding. They all had gathered there for a party. The boy was in fact was a nephew of one of them Sambhaji. They all were proceeding for a party but since it was

being held in a field the villagers perceived that it was some attempt at human sacrifice. The police also informed him about having inquired with the respondent by invoking the provisions of Section 68 of the Mumbai Police Act and having allowed them to let go under Section 69. Such a news explaining everything was also published on the very next day i.e. 12.07.2008 in the same daily. It is thus quite clear that it was a sheer misunderstanding and the news item was in fact a truthful disclosure of the happenings.

5. The learned advocate would submit that the complaint is devoid of any allegations that the applicants were harbouring some grudge against him and his associates and had published the news item to settle some score much less intending to harm his reputation. Since it turned out to be a factually correct reporting, no further inquiry is necessary and would fall under First exception to Section 499 which saves such true publication of a news item made in public good and was done in good faith and would also fall under Ninth exception, since the news was published in good faith for the protection of public at large and since it was seriously thought to be a case of human sacrifice.

6. The learned advocate for the applicants then placed reliance on the decision in the case of **Jawaharlal Darda and Ors. Vs. Manoharrao Ganpatrao Kapsikar and Anr.; AIR 1998 Supreme Court 2117**, **Dilip**

Babasaheb Londhe and Ors. Vs. State and Ors; 2013 ALL M.R. (Cri.) 4302 and the decision of a coordinate bench of this Court in **Criminal Application No.607 of 2006** dated **09.11.2017 Dinkar Keshvrao Raikar and Anr. Vs. Mirza Afzal Baig s/o. Mirza Anvar Baig** (Aurangabad Bench).

7. The learned advocate for the respondent no.2 submitted that once publication of the news item is brought on record. The contents of the news item clearly show that the respondent no.2 and his associates were clearly named therein to be the persons conveying to the public at large that they were nabbed by the villagers by suspecting that they were indulging in some inhuman act like human sacrifice. At this juncture this is sufficient to infer that it has the tendency of putting the respondent no.2 and his associates to disrepute and had a tendency to lower their reputation in the esteems of others as defined under Section 499 of the Indian Penal Code.

8. Whether the applicants had published such news item intentionally is a pure question of fact which can only be gone into and decided after extending sufficient opportunity to the respondent no.2 to prove his allegations. Similarly, whether or not they had published it for public good is again a question of fact as laid down in the first exception to Section 499 of the Indian Penal Code and being a question of fact, it could be decided only at a full-fledged trial. Consequently, when only the cognizance has been taken

by the Magistrate and a process has been issued, it cannot be concluded that the applicants had acted *bona fide* and had published the news item in good faith.

9. The learned advocate would submit that the applicants could have merely reported the incident without mentioning the names of the persons i.e. the respondent no.2 and his associates even if it was a fact that they were accosted by the villagers and were taken to the police station. If really the applicants were having some *bona fides* they should have waited for things to be clarified by police which according to them was done on the next day. The fact that the news was published hurriedly without such verification is demonstrative of the fact that they had not acted in good faith and the knowledge of the consequences of such serious imputations in a news item on the front page of the newspaper is sufficient to attribute knowledge on the part of the applicants that the contents of the news item had the potential to lower the reputation of the respondents in the esteems of others. Therefore the respondent no.2 deserves to be allowed to proceed with the trial and to lead evidence to substantiate the allegations. The facts *prima facie* make out a case of defamation and cannot be said to be an abuse of the process of law so as to quash and set aside the complaint itself.

10. I have carefully gone through the papers and particularly the

news item. To repeat in brief, the news item clearly mentions that the respondent no.2 and his associates were accompanied by a child and were present in a field nearby the village, the villagers perceived that they were about to give a human sacrifice and had assaulted them and had taken them to the police station. One can easily attribute knowledge of the consequences of publication of such a news item containing grave imputations. At this juncture, one need not delve much in this aspect and the contents of the news item indeed can easily be said to have lower the reputation of the respondent no.1 in the esteems of others and the knowledge of such consequence can easily be imputable to the persons who have published the news.

11. True it is that the applicant no.4 thereafter seems to have inquired with the police on the next day i.e. 12.07.2008 and received a reply mentioning that indeed such an incident had taken place but it was a case of misunderstanding and the respondent no.2 and his associates were allowed to go after some inquiry. It was also informed by the Assistant Police Inspector of Kasoda Police Station by his reply dated 26.11.2008 under his signature and seal of the office that the respondent no.2 and his associates were brought to the police station at 4.00 a.m. of 11.07.2008 and were let go at 13.05 hours after inquiry. It is also true that a detail news was again published in the same daily on 12.07.2008 giving all these details mentioning as to how the incident

had put the respondent no.2 and his associates to the assault and lots of embarrassment. But then though *prima facie* it can be said that news item merely reported the true state of affairs, still, the question here would be as to if the case of the applicants can be said to fall under the relevant exceptions i.e. the First exception and the Tenth exception. The exceptions read as under:

> *"First Exception – Imputation of truth which public good requires to be made or published.- It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.*
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> *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."*

12. As can be seen from the First exception, whether or not the statement or imputation is for the public good is a question of fact. Both these exceptions save the imputations which are made in public good. It being a pure question of fact, as has been observed in the case of **Dilip Babasaheb Londhe** (supra), it would be appropriate to leave it for the decision at the trial to ascertain if the news item was published in good faith, by extending

suitable opportunity to both the sides to lead evidence.

13. As has been held in the case of **Sewakram Vs. R.K. Karanjia; (1981) 3 Supreme Court Cases 208**, journalist do not enjoy some kind of special privilege or have a greater freedom than others to make imputations or allegations, sufficient to ruin the reputation of a citizen. They are in no better position than any other person. Truth of an allegation does not permit a justification under First exception unless it is proved to be in public good. The question whether or not it was for public good is a question of fact which needs to be proved like any other relevant fact. Bearing in mind these principles, without intending to traverse the jurisdiction of the Magistrate to inquire into and decide the issue, publishing names of the respondent no.2 and his associates in a news item which could have been published by deleting the names is indeed a material circumstance which will have to be borne in mind by the Magistrate during the trial. At this juncture, in my considered view, publication of such item which has the potential of putting the respondent no.2 to disrepute and to lower him in the esteems of the others is *prima facie* sufficient to constitute defamation as defined under Section 499 of the Indian Penal Code and the doors cannot be shut at the threshold.

14. However, toeing the line of decision of a coordinate bench of this Court in the case of **Dilip Babasaheb Londhe** (supra) it can certainly be said

that the applicant no.1 being Chairman, applicant no.2 being the Chief Editor could not have any direct role and responsibility in publishing the news item. It must have been the responsibility of the applicant no.3 who was the Editor and the applicant no.4 who was the news reporter of publishing such a news. Therefore, no fault can be found in the impugned order directing the process to be issued to the extent of applicant nos. 3 and 4 but the complaint deserves to be quashed qua the applicant nos. 1 and 2. To the extent of applicant nos. 3 and 4 the complaint cannot be quashed in the facts and circumstances of the case.

15. The decision in the case of **Jawaharlal Darda** (supra) was rendered in respect of a news item published in the same daily, which was in the form of a reporting of the answers/replies given by the Minister on the floor of the house in respect of misappropriation of Government funds meant for some irrigation projects. In those peculiar facts and circumstances it was found that it was published in public good and the complaint was quashed.

16. In the case of **Dinkar Keshvrao Raikar** (supra), a news item was published in the same daily mentioning that the complainant therein was a practising advocate and he and another advocate were detained by police and were in lock-up till next morning in respect of assault on some advocates and closure of functioning of the Court at the instance of the advocates. In the

peculiar facts and circumstances obtaining therein the brother Judge had found that a bare reading of the news item did not reveal necessary ingredients for constituting the offence of defamation and therefore the complaint was quashed.

17. On an independent scrutiny of the matter in hand, I have demonstrated herein above as to how *prima facie* there is material to show the offence of defamation having been committed. Therefore the applicant nos. 3 and 4 are not entitled to derive any benefit from these decisions.

18. The Criminal Application is partly allowed. The complaint filed by the respondent no.2 in the Court of the Judicial Magistrate under Section 500 of the Code of Criminal Procedure is quashed and set aside to the extent of the applicant nos. 1 and 2.

19. The Criminal Application seeking quashment of the complaint even in respect of applicant nos. 3 and 4 is dismissed. The Rule is accordingly made absolute.

[MANGESH S. PATIL, J.]

KAKADE