

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.545 OF 2021

Kangana Ranaut ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Rizwan Siddiquee i/b Siddiquee and Associates for the Applicant

Mr. A. R. Patil, A.P.P for the Respondent No.1–State

Mr. Jaykumar Bharadwaj a/w Ms. Priya Darshini Arora and Ms. Sabiha S. Shaikh for the Respondent No. 2

PSI Mr. Shrikant Dhumal from Juhu Police Station, is present

CORAM : REVATI MOHITE DERE, J.
RESERVED ON : 1st SEPTEMBER 2021
PRONOUNCED ON : 9th SEPTEMBER 2021

ORDER :

1 Heard learned counsel for the applicant, learned A.P.P for the respondent No.1-State and learned counsel for the respondent No. 2.

2 By this application preferred under section 482 of the Code of Criminal Procedure (`Cr.P.C`), the applicant has sought quashing of the criminal proceeding being CC No. 2575/SS/2020 initiated at the instance of

the respondent No. 2 in the Court of the learned Metropolitan Magistrate, 10th Court at Andheri, Mumbai, including quashing of all the orders, summons issued by the learned Magistrate.

3 Mr. Siddiquee, learned counsel for the applicant submitted that the cognizance taken by the learned Magistrate is without application of mind. He submitted that the impugned order issuing process suffers from non-application of mind, inasmuch as, the report filed by the police was one-sided and biased. He submitted that the learned Magistrate should not have ordered inquiry (investigation) by the police and should have instead inquired into the case himself. He further submitted that the learned Magistrate ought to have recorded the statements of the material witnesses relied upon by the respondent No. 2-complainant under oath, as per section 200 Cr.P.C, in order to verify whether a case was made out as against the applicant, as summoning a person results in serious consequences. He further submitted that no doubt, the Magistrate has discretion under Section 202 Cr.P.C to either inquire into the case himself or to direct an investigation to be made by the police officer or by such other officer as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding against the applicant, however, the learned Magistrate, in the facts, ought to have opted for the first option i.e. of

inquiring into the case himself, instead of directing an investigation by the police officer. He further submitted that the Magistrate illegally delegated the powers of inquiry to the Senior Inspector of Juhu Police Station, which eventually led to the illegal collection of signed witness statements by the Police Officer, in clear contravention of Section 162 Cr.P.C. He submitted that since there was a breach of Section 162 Cr.P.C, inasmuch as, the said statements recorded by the police were signed, the learned Magistrate could not have acted on the said signed statements, without examining them on oath. He further submitted that the learned Magistrate was duty-bound to examine not only the complainant but even the witnesses named in the complaint on oath, under Section 200, instead of directing the police to conduct an inquiry on his behalf. He further submitted that even the police have acted in a biased and unfair manner, by not recording the statement of the applicant or the applicant's, sister in the said case. Learned counsel submitted that the impugned order taking cognizance and issuing process suffers from non-application of mind, inasmuch as, the learned Magistrate has failed to consider all the aforesaid aspects. In support of his submissions, learned counsel relied on the following judgments -

1. *M/s. Pepsi Foods Ltd.& Anr. vs. Special Judicial Magistrate & Ors.*
- AIR 1998 SC 128;

2. *Sidharta Vashist vs. State of (NCT of Delhi) – 2010(2) ACR 1645 (SC);*
3. *Arvindbhai Ravjibhai Patel vs. Dhirubhai Sambhubhai Kakadia – 111(1997) CCR 662(Guj.);*
4. *Birla Corporation Limited & Ors. vs. Adventz Investments & Holdings Ltd. & Ors. - AIR 2019 SC 2390;*
5. *Mehmood Ul Rehman & Ors. vs. Khazir Mohammad Tunda & Ors. - AIR 2015 SC 2195;*
6. *Kaimala Bhargavi Amma vs. Kundumadathil Ravindran Nair and Ors. - 1979 Cri. L.J. 1279;*
7. *Anil Kumar and Ors. vs. M.K.Aiyappa and Ors. - 2013 (4) Bom CR (Cri) 296;*
8. *Aero Traders Pvt. Ltd. vs. Ravinder Kumar Suri – AIR 2005 SC 15;*
9. *Ram Khelawan vs. State of U.P. and 6 Ors. in Criminal Appeal No. 21 of 2021 dated 8th January 2021;*
10. *Tej Kishan Sadhu vs. State and Anr. in Criminal M.C. 292 of 2013 dated 2nd May, 2013;*
11. *S. Khushboo vs. Kanniammal and Ors. - AIR 2010 SC 3196;*
12. *Sakiri Vasu vs. State of U.P. and Ors. - AIR 2008 SC 907;*
13. *Pooja Pal vs. Union of India (UOI) and Ors. - AIR 2016 SC 1345;*
14. *Gangadhar vs. State of Madhya Pradesh – AIR 2020 SC 3656;*
15. *Hazari Lal vs. State (Delhi Administration) – AIR 1980 SC 873;*
16. *Babubhai and Ors. vs. State of Gujarat and Ors. - 2011(1) ACR 496 (SC);*
17. *Zahira Habibullah Sheikh and Ors. vs. State of Gujarat and Ors. - AIR 2006 SC 1367;*

18. *Nirmal Singh Kahlon vs. State of Punjab and Ors.* - AIR 2009 SC 984;
19. *Hardeep Singh and Ors. vs. State of Punjab and Ors.* - AIR 2014 SC 1400;
20. *Vinay Tyagi vs. Irshad Ali and Ors.* - 2013 (2) ABR 36 (MANU/SC/1101/2012);
21. *Jamatraj Kewalji Govani vs. The State of Maharashtra* – AIR 1968 SC 178;
22. *The State of Uttar Pradesh vs. Bhagwant Kishore Joshi* – AIR 1964 SC 221;
23. *Adalat Prasad vs. Rooplal Jindal and Ors.* - 2004(24) AIC 120;
24. *Inder Mohan Goswami and Ors. vs. State of Uttaranchal and Ors.* - AIR 2008 SC 251;
25. *Seema Devi vs. State of U.P. and 3 Ors. In Criminal Appeal No. 1647 of 2018 dtd. 24th September, 2018;*
26. *Vinubhai Haribhai Malaviya and Ors. vs. The State of Gujarat and Anr. in Criminal Appeal Nos. 478-479 of 2017 dtd. 16th October, 2019;*
27. *Vijay Dhanuka Etc. vs. Najima Mamtaj Etc. in Criminal Appeal Nos. 678-681 of 2014 dtd. 24th March, 2014.*

4 Learned counsel for the respondent No. 2 opposed the application. He submitted that no interference was warranted in the impugned order issuing process as well as the order passed by the learned Sessions Judge dated 5th April 2021, dismissing the applicant's revision application. He further submitted that there is no challenge to the allegations levelled in the complaint filed by the respondent No. 2 in the

aforesaid application, and that the challenge is restricted only to the procedure adopted by the learned Magistrate. Learned counsel for the respondent No. 2 submitted that the learned Magistrate has followed due procedure as established by law i.e. as set out in Sections 200, 202 and 204 Cr.P.C. He submitted that it was well within the discretion of the learned Magistrate to adopt any of the three options available to him and that no fault/illegality can be found in the discretion adopted by the learned Magistrate. He submitted that the police had summoned the applicant for recording her statement and the same is evident from the applicant's tweet of the same date i.e. 21st January 2021, however, the applicant did not appear before the police, for reasons best known to her. He further submitted that the order dated 1st February 2021, issuing process clearly reflects application of mind by the learned Magistrate. Learned counsel for the respondent No. 2 submitted that the order issuing process is not based only on the police report, as alleged by the applicant, but several other factors. He submitted that the order issuing process was challenged by the applicant in revision before the Sessions Court, Mumbai, and that the learned Sessions Judge has, after considering all the aspects, rightly dismissed the applicant's revision application, thereby confirming the order issuing process. In support of his submissions, learned counsel for the respondent No. 2 relied on the following judgments-

1. *Vijay Dhanuka & Ors. vs. Najima Mamtaj & Ors.*-(2015) 1 SCC (Cri.) 479;
2. *Adalat Prasad vs. Rooplal Jindal & Ors.*-2004 SCC (Cri) 1927;
3. *State of Bihar & Ors. vs. K. J. D. Singh* (Criminal Appeal No. 289/1985);
4. *Som Mittal vs. Government of Karnataka*- (2008) 3 SCC 574;
5. *Hareram Satpathy vs. Tikaram Agarwala & Ors.*(Criminal Appeal No. 551/1976);
6. *Kamta Prasad & Ors. vs. State & Ors.* (Allahabad High Court, CM No. 5897/1981).

5 Learned A.P.P also opposed the application.

6 Perused the papers.

7 At the outset, it is made clear that the applicant has not sought quashing of the proceedings on the basis of the averments made in the complaint i.e. the allegation in the complaint do not constitute an offence under Section 500, but, only on the basis of the alleged illegal procedure adopted by the learned Magistrate. The grounds raised in the application only pertain to the procedure adopted by the Magistrate and hence, it is not necessary to consider whether or not an offence of defamation is made out against the applicant, inasmuch as, there is no challenge to the same. The

aforesaid application is being considered only with respect to the objections/grounds raised by the applicant with respect to the procedure adopted by the learned Magistrate.

8 A few facts as are necessary to decide the aforesaid application are as under :

The respondent No. 2 has filed a private complaint bearing C.C. No. 2575/SS/2020, as against the applicant in the Court of the learned Metropolitan Magistrate, 10th Court, Andheri, Mumbai, on 3rd November 2020, alleging an offence punishable under Section 500 of the Indian Penal Code ('IPC'). According to the respondent No. 2/original complainant, the applicant has defamed him by making false and malicious statements, with the intent of harming and lowering his reputation in the eyes of general public, in an interview given by the applicant to one TV channel on 20th July 2020. According to the respondent No. 2, the applicant had damaged his immaculate reputation, by falsely attributing statements to him, in the said interview. Accordingly, the respondent No. 2, in his complaint, prayed that cognizance of the said offence be taken and the accused be tried in accordance with law. The respondent No. 2, alongwith the complaint, filed a list of witnesses and a list of documents, on which he proposed to rely.

The list of documents included the pen-drive containing the recording of the applicant's interview aired on the channel on 20th July 2020, print out of the news article published by the Channel on its Website, print out of the news article covering the defamatory statements made by the applicant in the interview on 19th July 2020, etc. To the said complaint, a certificate under section 65B of the Indian Evidence Act was also annexed of Carrol Theresa Desouza w/o Mr. Irwin Desouza. The learned Magistrate recorded the verification statement of the respondent No. 2 under section 200 Cr.P.C on 3rd December 2020. The said verification statement is on Page 98 of the application. Thereafter, the learned Magistrate on 19th December 2020, passed the following order :

**“ORDER BELOW EXH.1
(Passed on 19/12/2020)**

Claiming a stellar reputation the complainant has filed this complaint against proposed accused for the offence of defamation punishable under Section 500 of I.P.C. I have gone through the complaint, verification statement on oath and documents furnished on record. I have heard Mr. Niranjana Mundargi, the learned Advocate for complainant at length. Noticeably, the proposed accused is resident of Khar West, a area beyond jurisdiction of this Court, therefore, as per section 202(1) of Cr.P.C., it is essential to refer this matter

for inquiry to Juhu Police Station to ascertain that whether there are sufficient grounds for proceeding. Hence, I am satisfied to pass following order -

ORDER

- i. The matter be referred for inquiry under section 202 of Cr.P.C. to Sr. PI of Juhu Police Station.*
- ii. The Sr.PI of Juhu Police Station shall conduct the inquiry into the allegations made in complaint and submit his report without fail on given date.*
- iii. Returnable on or before 16/01/2021.*

Dtd.19/12/2020

*(XXXXXXX)
Metropolitan Magistrate,
10th Court, Andheri, Mumbai.”*

9 Pursuant to the aforesaid order directing the Senior PI of Juhu Police Station to conduct an inquiry (investigation) into the allegations made in the complaint and submit his report, the police conducted the investigation and submitted a detailed report to the learned Magistrate. According to the Juhu Police, the investigation disclosed the commission of an offence punishable under Section 500 of the IPC as against the applicant. Pursuant thereto, the learned Judge vide order dated 1st February 2021

issued process as against the applicant for the alleged offences punishable under Sections 499 and 500 of the IPC. The order issuing process passed by the learned Magistrate dated 1st February 2021 reads as under :

“ORDER BELOW EXH.1
(Passed on 01/02/2021)

This complaint is filed for offences of defamation under Section 499, 500 of Indian Penal Code. The perusal of complaint and verification on oath transpired that accused is residing at a place beyond the area of exercise of jurisdiction of this Court. Accordingly, issuance of process came to be postponed as per section 202 (1) of Criminal Procedure Code. In purview of section 202(1) of Criminal Procedure Code, directions came to be issued to Senior Inspector of Juhu Police Station for conducting an inquiry for the purpose of deciding whether or not there is sufficient ground for proceeding. As a sequel of that Juhu Police Station conducted inquiry and filed its detailed inquiry report at Exhibit 07. It is reported by Juhu Police that pursuant to inquiry it is found that offences under Sections 499, 500 of IPC are made out against accused.

2. *I have heard Mr. Jay Kumar Bhardwaj, the learned advocate for complainant at length. During hearing he has shown me the video of defamatory statement displayed on National News Channel. I have perused the complaint, statement on oath, supportive Police report under Section 202 of Criminal Procedure Code and other material on record very minutely and carefully.*

3. *The combined perusal of complaint, statement on oath, material on record and police report under Section 202 of Criminal Procedure Code furnishes a uniform assurance*

that there are sufficient ground for proceeding against accused for the offences under Section 499 and 500 of IPC. Hence, in view of given set of facts, material before me and Police report, I am satisfied to issue process against accused for the offences punishable under Sections 499 and 500 of IPC through undermentioned order :

ORDER

- i. Issue process against accused Ms. Kangna Ranaut for the offences punishable under Sections 499 and 500 of IPC on P.F.*
- ii. Summons returnable on 01/03/2021.*

Dtd.01/02/2021

*(XXXXXXXXX)
Metropolitan Magistrate,
10th Court, Andheri, Mumbai.*

10 Before adverting to the submissions advanced by the learned counsel for the applicant, it would be apposite to reproduce the relevant sections, having a bearing on the decision of the aforesaid application. Sections 200 and 202 Cr.P.C read thus :

“200. Examination of complainant. *A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-*

(a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192: Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re- examine them.”

“202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call

upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer-in-charge of a police station except the power to arrest without warrant.” (emphasis supplied)

11 In the facts, the Magistrate examined the complainant i.e. respondent No. 2 on oath on 3rd December 2020 and thereafter, sent the complaint for investigation to the Senior Police Inspector of the concerned Police Station. It is well settled that a Magistrate, after examination of the complainant (responded No. 2), can postpone the issuance of process, if he thinks fit, as has been done in the present case. The three options available to the learned Magistrate under Section 202 Cr.P.C were - (i) to either inquire into the case himself or (ii) to direct the police to make investigation or (iii) to give direction to investigate to such other person, as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused. In the present case, the Magistrate has exercised his discretion by adverting to the 2nd option i.e. by directing an investigation to be made by the Senior Police Inspector of the Juhu Police Station. The police, after investigation i.e. after recording the statements of several witnesses, has submitted its report to the learned

Magistrate by observing that a cognizable offence is disclosed as against the applicant. On receipt of the report, the learned Magistrate, after hearing the advocate for the respondent No. 2 and *prima facie* considering the evidence on record, issued process as against the applicant vide order dated 1st February 2021. The impugned order issuing process reflects that the learned Magistrate saw the video of the defamatory statement displayed on the National News Channel, perused the complaint, statement on oath, supportive police report under Section 202 Cr.P.C and other material on record very minutely and carefully and after observing that all the aforesaid material furnishes a uniform assurance that there is sufficient ground for proceeding against the applicant, proceeded to issue process against the applicant under Sections 499 and 500 of the IPC. Thus, the learned Magistrate was not swayed only by the police report, but had considered all the aspects, before exercising his discretion to issue process. According to the learned counsel for the applicant, the examination of witnesses was essential, so that, the applicant would have got an opportunity to cross-examine the said witnesses. The question of cross-examining the witnesses does not arise at the stage of Section 200 nor under Section 202 Cr.P.C, as it is the pre-cognizance stage. As far as non-examination of complainant's witnesses under section 200 Cr.P.C is concerned, it is evident from a perusal of Section 200 that a Magistrate taking cognizance of an offence on a

complaint, shall examine upon oath, the complainant and the witnesses present, if any. Admittedly, the complainant has been examined under Section 200 Cr.P.C and as such, there has been compliance of Section 200 Cr.P.C. It appears that the witnesses were not present. It was well within the power of a Magistrate to postpone the issuance of process, by taking recourse to any of the three options available under Section 202, so as to satisfy himself and decide, whether or not there is sufficient ground for proceeding against the accused. In the facts, no infirmity can be found in the discretion exercised by the learned Magistrate. The learned Magistrate, in the order dated 19th February 2020, directed the police to conduct an `inquiry` instead of investigation. It appears that the learned Magistrate has inadvertently mentioned `inquiry` instead of `investigation`. The term used in Section 202 Cr.P.C is `investigation` and not `inquiry` and as such the said word `inquiry` in the order dated 19th February 2020 will have to be read as `investigation`. Nothing much turns on the incorrect nomenclature used by the learned Judge. It appears to be an inadvertent mistake. The same is also observed by the learned Sessions Judge whilst dismissing the applicant's revision application.

12 As far as the impugned order issuing process is concerned, the same is not solely based on the police report, but is a combined analysis of

the verification statement of the complainant, averments in the complaint, the CD/pen-drive, police report and other documents on record.

13 As far as statements recorded by the police are concerned, it appears that the applicant was summoned by the police of the Juhu Police Station, however, she did not appear before the police. As far as statements of witnesses recorded by the police under Section 162 Cr.P.C are concerned, no doubt, signatures of the witnesses ought not to have been taken on the said statements, however, that does not make the evidence of the witnesses who signed the said statements, inadmissible. It may only impair the value of the said statements. The same has been considered by the Privy Council in the case of ***Raleigh Investment Co. Ltd. vs. The Governor General in Council – AIR (34) 1947 PC 78.***

14 The learned Sessions Judge, Mumbai, rejected the revision application preferred by the applicant against the order issuing process, after giving cogent reasons for the same. The said order dated 5th April 2021 has not been challenged in this application. However, be that as it may, having gone through the said order, no infirmity is found in the said order.

15 As far as the judgments relied upon by the learned counsel for the respective parties are concerned, there can be no dispute about the proposition of law laid down in the said judgments, and as such it is not necessary to advert to each of the case.

16 Having regard to the aforesaid, no ground is made out for interfering or quashing the proceedings on the basis of alleged procedural irregularity/illegality adopted by the learned Magistrate whilst taking cognizance of the complaint. The order issuing process dated 1st February 2021 reflects application of mind and hence, warrants no interference.

17 Accordingly, application being devoid of merit, is dismissed.

REVATI MOHITE DERE, J.