

HIGH COURT OF GUJARAT

PATEL ISHWARBHAI AMBARAM AND OTHERS

Versus

STATE OF GUJARAT

Date of Decision: 10 October 1996

Citation: 1996 LawSuit(Guj) 495

Hon'ble Judges: [S D Pandit](#)

Eq. Citations: **1997 1 GLH 22**, 1997 2 GCD 12

Case Type: Criminal Miscellaneous Applicatio

Case No: 2095 of 1996

Subject: Criminal

Acts Referred:

[Indian Penal Code, 1860 Sec 499](#)

[Code of Criminal Procedure, 1973 Sec 482](#)

Final Decision: Appeal allowed

Advocates: [R C Jani](#), [H S Mehta](#), [P K Jani](#)

Cases Referred in (+): 2

[1] Rule.

[2] The learned Advocate for both the sides are allowed to argue the matter on merits and both the sides have argued at length. Therefore, at this stage I proceed to decide the petition finally.

[3] The original accused in Criminal Case No. 387/96 on the file of the learned Judicial Magistrate, First Class, Chanasma have preferred the present application-petition and by this petition, they are seeking the quashing of the order of issuance of process issued by the learned Judicial Magistrate First Class, Chanasma against them and to quash the said criminal proceeding.

[4] The respondent No. 2 Patel Ishwarbhai Joitaram has filed this private Criminal Case No. 387/97 on 19th April 1996 in the court of Judicial Magistrate, First Class,

Chanasma. In the complaint, the complainant-respondent No. 2 before me has alleged that in the meeting of the executive committee of the caste to which the petitioners and respondent No. 2 belongs was held on 31st March 1996 at Islampura High School of Chanasma, a resolution was passed against him and his family members as well as his brother to excommunicate them as he was not ready to have the settlement between him and accused Nos. 11 and 13 and 14 as his sons were not ready to accept the accused No. 13-Ritaben and accused No. 14-Mitaben. According to the respondent No. 2-complainant by passing the said resolution, the accused have committed an offence punishable under Section 500 read with Section 114 of the Indian Penal Code. After recording the statement of the respondent No. 2-complainant on oath, the learned Judicial Magistrate First Class was pleased to issue process against the present petitioner under Sections 500 and 114 of Indian Penal Code. That order of the learned Judicial Magistrate First Class, Chanasma is being challenged before me.

[5] At this stage of issuance of process, it is not the duty of the Court to find out as to whether the accused will be ultimately convicted or acquitted. The object of consideration of merits of the case at this stage could only to determine whether there are sufficient grounds to proceed further or not. If however, the bare perusal of the complaint or evidence in support of the same taken at their face value, makes absolutely no case against the accused or the complaint does not disclose the essential ingredients of the offence which is alleged against the accused, then only the order of issue of process could be quashed. In the case of Punjab National Bank and Others v. Surendra Prasad Sinha, A.I.R.. 1992, Supreme Court, 1815, the Appex Court has laid down the principles that judicial process should not be an instrument of oppression or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complainant as a vendetta to harass the person needlessly. Therefore, bearing this aspect in mind.' I proceed to consider the material on record.

[6] It is the case of the complainant- respondent No. 2 that in the meeting of 31st March 1996, the present petitioners before me have passed a resolution of excommunicating him, his family members and his brother. No doubt, it is vehemently urged before me by the learned Advocate for the petitioners that there is no such resolution, but I am not to go into this controversy between the parties and record any finding as to whether the claim of the petitioners is correct or not. At this stage I have to accept the averments made in the complaint by giving face value to the same.

[7] But the real cruce of the matter is as to whether the averments made by the complainant in his complaint discloses any offence under Section 499 of IPC which is punishable under Section 500 of the IPC. It is very pertinent to note that it is not the

allegation of the complainant-respondent No. 2 in his complaint that at the time of passing of the said resolution of excommunication, the present petitioners had made any "imputation" against the complainant. Here passing of a resolution of excommunication would not amount to making any imputation. An offence under Section 499 would take into place only if the accused makes any imputation which would result into defamation of the complainant. Mere passing a resolution of excommunication would not amount to making out of any imputation. The excommunication made at the most give rise to a civil dispute and it would not amount to any criminal act. In the case of *In Re Selthu and Others*, 50 CR. L.J. 797 it has been held that threat of social boycott would not amount to commission of any criminal offence and the excommunication may in some cases give a cause of action for civil suit, but not a criminal case. The learned Advocate for the petitioner had cited before me the case of *Ratansey Virji and Another v. Meghji Hirji Jangeali and Others*, A.I.R. 1934 Bombay, 431, but in that case also there was a civil suit and civil proceeding between the parties and in that suit, there was a question of consideration the resolution passed by which the plaintiff had alleged that he was excommunicated. That authority has no bearing on the facts before me. But any way in view of the allegations made by the complainant in his complaint, there is only claim of the complainant that a resolution has been passed to excommunicate him. Passing of such resolution would not amount to making any defamation of him. Consequently, the complaint of the complainant does not disclose the commission of any offence by the petitioners as to take cognizance of the same and to issue process against the present petitioners. I, therefore, hold that the present petition will have to be allowed and the order of issue of process passed by the learned Judicial Magistrate, First Class, Chanasma in Criminal Case No. 387/96 as well as the said Criminal Case No. 387/96 will have to be quashed.

[8] I, accordingly allow this petition and quash the order of issuance of process as well as the Criminal Case No. 387/96 on the file of the learned Judicial Magistrate, First Class, Chanasma. The petition is thus accordingly allowed. Rule is made absolute. Rule made absolute.