



82-year-old former secretary of Bandra society fined ₹10K for defaming resident

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Mumbai: With judicial records proving that a flat owner and her advocate daughter's litigation against a Bandra housing society was in their favour, a sessions court on Tuesday convicted an 82-year-old former office-bearer of the society, finding him guilty of defaming the woman and her daughter by falsely branding them as harassers who filed fabricated lawsuits.

The judge set aside a 2019 magistrate's order that cleared Rajendra Kumar Jain, former secretary of Nishigandh Sahniwas Cooperative Housing Society Ltd in Bandra, of defamation charges.

On the issue of sentencing,

the judge noted that Jain is now 82 years old, suffers from multiple ailments, and attended the proceedings in a wheelchair accompanied by a caretaker. In view of these medical factors, the judge decided against a jail term. The judge ordered Jain to pay a fine of Rs 10,000, specifying that Rs 9,000 of the recovery must be disbursed to the complainant, the resident's daughter Shobha Sheth, as compensation.

The legal battle arose from an annual general meeting notice and agenda circulated to society members in Nov 2012. The management introduced a resolution to initiate expulsion proceedings against a resident, on the grounds that she was "harassing the society and its members in innume-

rable ways by filing false civil/criminal and other cases through her daughter".

However, after considering the orders of various courts, tribunals and competent authorities, the sessions court found the mother of the complainant had not filed false cases. Therefore, the statement made in the agenda by the secretary was a false statement and defamatory, the court held. "Considering the wordings in the agenda... the imputation is directly affecting the complainant as well as the mother because by making the circulation the accused called them habitual persons harassing the housing society by filing false cases. This statement is definitely causing harm to the reputation of the complainant who is

an advocate by profession as well as the mother of the complainant as she is an honourable member of the housing society," additional sessions judge Mujibodeen S Shaikh said.

Sheth moved the sessions court in 2019 against a magistrate's order acquitting Jain.

Appearing in person, Sheth submitted before the court that the notice of meeting published and circulated amongst the members of the housing society contained defamatory material against her mother and herself.

The accused submitted he acted as per the collective will of the society members and several others had complaints against the mother and daughter. There was no intention of defamation, he submitted.

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Decided on	02/06/2019
Duration	07Y: 01M: 16D

IN THE COURT OF SESSIONS FOR GREATER MUMBAI,

BRANCH AT MAZGAON

CRIMINAL APPEAL NO.334 OF 2019

Ms. Shobha Venkatesh Shet]
Aged 57 years, Profession : Advocate,]
Residing at : Nishigandh, 4th Floor,]
Flat No.19, Bldg. No.1, New M.I.G. Colony,]...**Appellant/**
Khernagar, Bandra (E), Mumbai - 400 051.]**Orig. Complainant**

V/s.]

Mr. Rajendra Kumar Jain]
Aged about 70 years, Occ. : Retired,]
Residing at : Palm Villa, 162, Convent Road,]...**Respondent/**
1st Floor, Bandra (West), Mumbai - 400 050.]**Orig. Accused**

Appearance :-

Appellant in person.

Mr. Pramod Kumar Vachheta, Ld. Adv. for respondent.

**CORAM : H.H. THE ADDL. SESSIONS JUDGE
MUJIBODEEN S. SHAIKH,
COURT ROOM NO.88.**

DATE : 02nd JUNE, 2026

(J U D G M E N T)

1] This Criminal Appeal is preferred by the appellant/original complainant against the judgment and order passed by the learned

Metropolitan Magistrate, 32nd Court, Bandra, Mumbai, dated 12/03/2019 in C.C. No.3428/SS/2012 thereby acquitted the respondent/original accused from the offence punishable under Sections 500 and 506 of the Indian Penal Code.

2] The complainant has filed complaint for the offence punishable under Sections 500 and 506 of IPC against accused Nos. 1 and 2. During the pendency of complaint, accused No.2 died and therefore, case is abated against him. It is the case of the complainant that accused by making an imputation through an agenda of General Body Meeting published and circulated to the members of Nishigand Sahniwas Cooperative Housing Society Limited coupled with the offence of threatening and terrorizing the complainant as an effect of said agenda to consider passing a resolution containing an agenda No.3 viz., "for adopting expulsion proceedings against the member Smt.K.V. Sheth for harassing the society and its members in innumerable ways by filing false civil/criminal and other cases through her daughter Kum. S.V. Shet" i.e. the complainant. The Ld. Magistrate issued the process. The accused appeared in the matter. The plea has been recorded. Accused pleaded not guilty and claimed to be tried. The defence of the accused is of total denial. The complainant is examined herself as a sole witness and she has relied upon number of documents. The accused did not lead any defence evidence. After hearing arguments and considering the written arguments of the parties, the Ld. Magistrate acquitted the accused for the offence punishable under Sections 500 and 506 of IPC by passing the impugned order. The original complainant being aggrieved to the order and judgment, preferred this appeal on the following grounds-

1. The Ld. Trial Court has grossly erred in law and on facts in passing the judgment just arbitrarily without application of mind. The entire judgment is absolutely contradictory to the documentary evidence on record, which goes to prove its illegality, prejudice and bias.
2. The Ld. Magistrate has grossly erred in law in holding that the accused is protected under Exception 1 and 9 to Section 499 of I.P.C.
3. The Ld. Magistrate grossly erred by giving ridiculous findings that the appellant/complainant has to prove/show that she has the reputation in the society and that she has failed to prove the same.
4. The Ld. Magistrate has grossly erred for not considering the judgments and orders passed by other Courts and Competent Authority on various issues raised by the complainant. The accused has not taken the defence under Exception No.1 and 9 to Section 499 of I.P.C. but the Magistrate suo motu given the findings that act of accused comes under Exception No. 1 and 9 to Section 499 of I.P.C.
5. The Ld. Magistrate grossly erred in holding that the complaint itself is barred under Section 199 of Cr.P.C. and that consequently the charge under Section 500 of I.P. C. does not attract.

3] I heard the arguments of both parties. Perused the judgment, written reply and documents produced on record. The following points arise for my consideration and my findings thereon are

given with the reasons stated below :-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the complainant proves that on 22/11/2012, accused No.1 being Secretary and accused No.2 being Chairman of Co-operative Housing Society Limited circulated the notice of Annual General Meeting along with agenda and therein both the accused in view of their common intention threatened to initiate expulsion proceeding against mother of complainant and defamed by means of writing intending to harm or knowing or having reason to believe that said imputation will harm the reputation of complainant and her mother and thereby committed an offence punishable under Section 500 of I.P.C.	In the affirmative
2.	Whether the impugned order passed by the Ld. Chief Judicial Magistrate is legal and proper ?	In the negative
3.	Whether the interference of the Appellate Court is necessary ?	In the affirmative
4.	What order ?	Criminal Appeal is hereby allowed.

REASONS

AS TO POINT NOS.1 TO 4 :-

4] The complainant in person submitted before the Court that the notice of meeting published and circulated amongst the members of Cooperative Housing Society contains defamatory materials against the mother of the complainant and complainant herself. In the agenda of meeting dated 22/11/2012, agenda No.3 contains defamatory matter against the complainant and her mother that they are in habit of harassing the society and its members in innumerable ways by filing false civil & criminal and other cases against housing society, their member and office bearers for harassing them. The said notice is at Exh.P-40. In the statement under Section 313 of Cr.PC., the accused has also taken stand that complainant is repeatedly harassing the Managing Committee and because of which the Committee is not functioning properly. The witness has filed various cases against the society and the Managing Committee. The complainant has given her evidence in which she has reiterated all the facts mentioned in the complaint. She has pointed out the various proceedings filed against the society before Assistant Registrar Cooperative, the Cooperative Court and various others Competent Authorities including City Civil and Sessions Court, as well as the Hon'ble Bombay High Court. The complainant has deposed that her mother has filed number of complaints against the management of the society for claiming reliefs under the provisions of different laws. It is also deposed by the complainant that in all the cases filed by her mother against the Managing Committee of the Cooperative Housing Society, the Judgment and orders are passed in their favour and therefore, it cannot be said that false cases had been filed by the mother of the complainant through complainant. The complainant has relied upon the order of Joint Registrar vide Exh.6 regarding the membership of mother of applicant. She has also relied upon the copy of notice given to the

accused calling upon him to withdraw the defamatory notice Exh.9 dated 22/11/2012 and tender the written apology. She has also produced on record the order of the Cooperative Court vide Exh.14. This order is against the society directing to repair the premises of the complainant. Exhibit-15 is the order of the Cooperative Court passed in favour of the mother of complainant. By the said order, mother of the complainant is permitted to get work done in the premises through registered Architect. The order of member of Cooperative Tribunal Exh.18 is also passed in favour of mother of the complainant. The said order pertaining to resolution for recovering Rs.500/- as reserve fund is held illegal by the Court. Considering the evidence of the complainant coupled with the various orders, it reveals that the mother of complainant being member of Nishigand Sahniwas Cooperative Housing Society made various complaints to the society as well as Competent Authority or in the Court pertaining to the issues or problems facing in her flat occupied in the said Cooperative Housing Society. Therefore, prima facie, it cannot be said that false civil or criminal cases filed by the mother of the complainant against the society office bearers for harassing the society and its members in innumerable ways. Here, in the agenda in question the society office bearers were intending to expulsion of member i.e. mother of the complainant. The procedure for expulsion of member is given in Rule 29 of the Maharashtra Cooperative Societies Rules, 1961. Rule No.29 provides that the Registrar in proceeding under Rule 29 in the matter of giving approval to resolution of expulsion of member as to hold inquiry after notice to member concern and must give that member an opportunity being heard. The procedure contained in Rule 29 is mandatory and any resolution passed in violation of requirements of the rule is illegal.

5] The accused has taken the defence that he has acted as per collective will of the society members and number of society members have made complaints against the complainant and her mother. There was no intention of defamation as alleged by the complainant. The Ld. Trial Court has given the benefit of Exception No.1 and 9 of Section 499 of I.P.C. to the accused to whom the appellant has challenged that no such defence has been taken by the accused. I have gone through the First exception which speaks imputation of truth which public good requires to be made or published. The Ninth Exception relates with imputation made in good faith by person for protection of his or other's interest. Here, the matter in question does not relate with public good nor made in good faith for protection of his/her/or other's interest. Therefore, findings recorded by the Ld. Trial Court to that effect is not justifiable. For proving the defamation, four elements are necessary to be proved i.e. (1) a false statement (2) publication (3) Identification and (4) Actual harm.

6] Here, after considering the orders of various Courts and Competent Authorities and Tribunals, it reveals that mother of complainant has not filed false cases. Therefore, the statement made in agenda No.3 by Secretary or accused is false statement. This statement is circulated amongst the members of the society. Therefore, it is communicated to at least more than one third party than complainant and accused. The identification of complainant and her mother is clear to other members of the society regarding accusation. Now, question remains whether complainant has proved that the statement or accusation caused miserable damage to her reputation or reputation of her mother resulting in financial, professional or severe emotional loss. Considering the wordings in the agenda No.3, the imputation is directly

affecting on the complainant as well as on the mother because by making circulation accused called them as habitual persons harassing the housing society by filing false cases. This statement is definitely causing harm to the reputation of complainant who is an advocate by profession as well as mother of complainant as she is honourable member of housing society. This complaint is filed by the complainant for herself and her mother therefore, same is maintainable. This complaint is filed within 6 months therefore, as per Section 199 (5) of Cr.P.C. the Court can take cognizance.

7] Considering the above discussed facts and circumstances, the impugned judgment and order passed by the Ld. Trial Court is not legal and proper therefore same is required to be set aside and accused is required to be held guilty for the commission of offence under Section 500 of I.P. C.

8] When I held the accused guilty for the commission of offence under Section 500 of IPC, I have to hear the accused on the quantum of sentence. Today, neither accused nor his advocate are present before the Court. Therefore, this matter is deferred on next date for hearing the accused on quantum of sentence.

9] Today respondent / Org. accused is present. Appellant is absent. I heard the accused on the quantum of sentence. Accused has submitted that he is 82 years old. Suffering from number of deceases and he is unable to walk. Respondent / accused appeared before court on wheel chair alongwith caretaker. I heard advocate for accused. He has submitted that accused is suffering number of deceases. He is unable to hear and unable to move from one place to another. He is continuously undergoing treatment in the hospital. He has placed on

record the medical papers of Bombay Hospital and Medical research Center, Mumbai. After have been considered the above said facts, I am of the view that appellant / accused is not in a position to send him jail by passing the order of imprisonment and therefore, the lenient view is required to be taken as per section 500 of IPC. Looking to the facts and circumstances the following order will meet to the end of justice.

ORDER

1. Criminal Appeal No.334 of 2019 is hereby allowed.
2. The impugned judgment and order passed by the learned Metropolitan Magistrate, 32nd Court, Bandra, Mumbai, dated 12/03/2019 in C.C. No.3428/SS/2012 is set a side.
3. Accused is held guilty for the offence punishable under section 500 of IPC.
4. He is sentenced to suffer fine of Rs.10,000/- within one week. In default of fine he shall undergo one month simple imprisonment. After depositing the amount of Rs.10,000/- in the court, the registry of this court to pay Rs.9000/- to the Org. complainant/appellant towards compensation after appeal period is over.
5. Accused shall surrender the bail bonds.
6. Proceeding is closed.
7. Criminal Appeal No.334 of 2019 is disposed of accordingly.
8. R and P be sent back to the Trial court.

The judgment is dictated and pronounced in the open Court.



(Mujibodeen S. Shaikh)

**Addl. Sessions Judge,
Sessions Court, C.R. No.88,
Mazgaon, Gr. Mumbai.**

Date : 02/06/2026

Directly typed on computer on : 02/06/2026
Checked on & Signed on : 02/06/2026

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”		
Upload Date	Upload Time	Sadhana D. Salunke Clerk Typist
02/06/2026	02.00 p.m.	
Name of the Judge (With C.R. No.88)	HHJ SHRI MUJIBODEEN S. SHAIKH (COURT ROOM NO.88)	
Date of Pronouncement of JUDGMENT / ORDER	02/06/2026	
JUDGMENT / ORDER signed by P.O. on	02/06/2026	
JUDGMENT / ORDER uploaded on	02/06/2026	

Received on 17.12.2012
Registered on 17.12.2012
Decided on 12.03.2019
Duration 6 Y 2 M 25 D

**IN THE COURT OF METROPOLITAN MAGISTRATE,
32ND COURT, BANDRA, MUMBAI.
(PRESIDED OVER BY MR SUDHIR N. SHINDE)**

(Judgment U/Sec. 355 of the Cr.P.C.)

Exh.P-51

- (a) Serial number of the case : **3428/SS/2012**
CNR No.MHMM18-004667-2012
- (b) Date of commission of the offence. : 22.11.2012
- (c) Name of the complainant, if any, : **Ms. Shobha Venkatesh Shet,**
Age – 50 Yrs; Occ. - Advocate,
R/o. 'Nishigandh', 4th Floor, 1/19,
New M.I.G. Colony, Kherwadi,
Bandra (E), Mumbai – 400 051
- (d) Name of the accused persons, their parentage and residence : **1. Mr. Rajendra Kumar Jain,**
Age – 65 Yrs; Occ. - NIL
R/o. Flat No.4, Ground Floor,
'Nishigandh' building No.1, New
M.I.G. Colony, Kherwadi, Bandra
(E), Mumbai – 400 051
2. Mr. M.C. Bhakt (since dead
pending hearing, **abated**)
- (e) Offence complained of or proved. : U/Sections 500 & 506 of IPC
- (f) Plea of the accused persons and their examination, if any : Accused pleaded not guilty.

- (g) Final order : Accused no. 1 is Acquitted and complaint dismissed.
- (h) Date of order : 12.03.2019

ADVOCATES:

For the complainant : Ms. Shobha Venkatesh Shet (in person)

For accused : Shri Pramod Kumar Vachheta.

J U D G M E N T

(Delivered on this day 12th day of March, 2019)

1. This is a complaint filed otherwise than on police report alleging commission of offence under section 500 and 506 of IPC. Since accused No.2, died pending hearing, case is abated for him. Thus, the accused No.1, only facing trial for alleged defamation of the complainant Adv. Ms. Shobha V. Shet, by making an imputation through an agenda of general body meeting published and circulated to the members of the *Nishigand Sahnivas CHS Ltd.* coupled with the offence of threatening and terrorizing the complainant as an effect of said agenda to consider passing a resolution containing an agenda No.3 viz., *"for adopting expulsion proceedings against the member Smt. K.V. Shet for harassing the society and its members in innumerable ways by filing false civil/criminal and other cases through her daughter Kum. S.V. Shet"* i.e. the complainant.

2. In order to prove the offence of defamation as defined under section 499 of IPC, the section requires proof of three essentials as following :-

- i) Making or publishing any imputation concerning any person.

- ii) Such imputation must have been made by
 - a) words, either spoken or intended to be read; or
 - b) Signs; or
 - c) Visible representation.
- iii) Such imputation must have been made with the intention of harming or with knowledge or reason to believe that it will harm the reputation of the person concerning whom it is made.

3. The offence under section 499 of IPC has to be read with the explanation No.1 to 4 appended to the said section coupled with the exceptions No.1 to 10. The exception No.1 & 9 are relevant for the case in view of defence raised by the accused. Thus, quoted below for ready reference :-

First Exception:- It is not defamation to impute anything which is true concerning any persons, it would be for a public good that the imputation should be made or published, whether or not it is for the public good is a question of fact.

Ninth Exception:- It is not defamation to make an imputation on the character of another provided that the imputation be made in the good faith for the protection of the interest of the person making it, or any other person, or for the public good.

4. It is not in dispute that the complainant is the associate member, meaning thereby she is residing along with her mother, a member of the *Nishigandh Sahnivas CHS Ltd*. It is also not in dispute that accused No.1, being Honorary Secretary of the said society on 22.11.2012, issued notice publishing and circulating agenda for annual general meeting for the year 2012-2013, scheduled to be held on

09.12.2012, including one of the agenda at serial No.3, as following, which is according to complainant is defamatory and intentionally published to terrorized and to threatened the complainant, pursuing her lawful complaints and claims against the society and the members of managing committee etc.

AGENDA

- 1)
- 2)
- 3) To consider passing a resolution for adopting expulsion proceedings against our member Smt. K.V. Shet for harassing the society and its members in innumerable ways by filing false civil/criminal and other cases through her daughter Kum.S.V. Shet.
- 4)
- 5)

It is also not in dispute that the said meeting qua proposed agenda has been cancelled and not taken place for whatever good reason, but the agenda is not said to be withdrawn or and no express apology was submitted. Thus, the reason for cancellation of meeting is not decisive.

5. The imputation regarding expulsion proceeding *qua* filing of false civil/criminal cases is *per se* defamatory qua the member of society i.e mother of complainant. Thus, the accused called upon to explain the particulars of the offence recorded vide Exh-4. The accused pleaded innocence and claimed for trial. It is defence of accused that the imputations are made in a good faith on facts for the welfare of the members of society. According to accused, the complainant is in habit to harass the entire society members for any and every issue by creating an

issues and lodging false complaints and cases and by threatening to file cases on petty issues. It is the defence of accused that the complainant is only the member of society, who is non co-operative and using the name of her mother directly or indirectly involved in filing false cases, viz., complaint against Water Pump matter, challenging General Body decisions, viz., increasing maintenance and create fund for repairs, alleging illegal water connection and many more. Her only intention is to create a false issue and then file a case and to harass the society members, to extract members and such acts of filing cases has been on from last 10 to 15 years and thus the expulsion proceeding was become inevitable as the 17 active members had also lodged complaint against the complainant with the police and made known the same to committee members. The accused No.1, acted lawfully *vis-a-vis* a collective will of the society members. There was no intention of defamation as alleged.

6. Complainant took me through the complaint allegations and documents and argued that the accused have no iota of evidence to prove the defence. Same is thus not probable to consider. The publication of such agenda and its non withdrawal by canceling the meeting is sufficiently shows the intention to defame. She argued and pointed the decisions passed in favor of her mother and submitted that all the cases she filed were bonafide and the court thus granted reliefs including compensation for harassment. On the point of locus standi, she relied upon explanation 2 to section 499 and section 199 of Code of criminal procedure and submitted that being aggrieved and likely to be suffered being associate member, the complaint is maintainable.

7. On the other hand ld. Advocate for accused took me through the entire documents on record and argued that the complaint is not maintainable. It's a sheer misuse of process of law. This complaint itself is false as like other complaints filed by the complainant for her mother and for herself. He vehemently submitted to note the conduct of complainant pointing out all the petty issues she used to raise and create issues to harass the members. He argued that merely getting some orders from court is not justified to shield her illegal activities under the disguise. She used to give threat of filing court cases to the members and indulged in filing repetitive complaints and appeals, which is never possible for the committee members to pursue the same owing to their disabilities and old age and they being acted honorary. He also argued that due to the terror, complaints and harassment no member coming forward to manage the society affairs. Therefore, the administrator was appointed. He also submitted that it is only the complainant who alleged all the issues. If such issues are really in existence, then certainly other members too would have raise issue. But, it is only complaint who created issues only with an intention to extort money to help her family. She is only non-cooperative member and cause disrepute to the society and her acts are detrimental to the interest of the members of society. He thus submitted that on account of complaints made by the society members to police and to the managing committee, the agenda was taken for discussion. He also argued that the agenda had to pursue some day or other as it became inevitable and reiterate the defence qua exception 1 and 9 of the section 499.

8. Both the complainant and accused No.1, examined themselves and have been extensively cross-examined each other and relied upon

various documents. Their evidence has to be appreciated in view of the submissions, facts and circumstances relied upon the accused and status of the parties, being members of a common Co-operative Housing Society, which is formed with some definite objectives of welfare of members with mutual co-operation and self help amongst the others. The accused has to show the preponderance of probability of his defence.

9. The complainant in her complaint and evidence raised various allegations against the accused persons alleging that they are harassing her since inception of society. Whereas, it is not in dispute that accused No.1, has took charge of Honorary Secretary in the year 2011. As complainant too deposed not aware about the same. The allegations pertaining to deceased accused No.2, & his daughter etc. become infructuous thus need no consideration.

10. The complainant alleged and deposed that she issued legal notice dt. 23.11.2012 Exh-9 calling upon the accused persons to withdraw the agenda and to submit apology. The accused persons neither withdrawn the allegations *qua* the agenda nor submitted apology, thus this complaint.

11. Complainant deposed, the agenda being circulated to the members of entire society and the annual general body meeting being cancelled on some bogus grounds and the expulsion of member being a very serious issue which involves and attaches stigma to a member and her family as a whole, defaming them for life in the eyes of society and injuring their reputation/dignity, and lowering their esteem in the

society and hence expulsion cannot be used as a tool to defame, harass and threaten the family of complainant to refrain from taking the course of court of law to redress her grievances against accused No.1 and the society.

12. All the accused persons thus published the defamatory contents with common intention to defame, harass and threaten the complainant. According to complainant, the accused persons are deliberately fomenting the litigations and compelling her mother to approach the court of law by not carrying out repairs to her flat, despite heavy leakage of water etc. According to her, the Co-operative Court, Appellate Co-operative court, High Court, Mumbai, have passed all order in favour of her mother and also awarded compensation to her mother for causing undue harassment and hardship.

13. Since October 2012, there is severe sound nuisance generated by defective water pumping system, which causing disturbance and mental and physical torture to her family. Despite complaint to accused dated 14.10.2012, they deliberately avoid to carry out the repairs. Despite complaint to the police and BMC, the accused neglected to repair, which compelled her to approach consumer forum. By interim order dt. 02.11.2012, the society was directed to carry out urgent repairs within one week. Which accused failed to comply. Thus, she submitted that the accused have had the knowledge and intention to harass complainant and in committing the offence, thus she lodged complaint.

14. It is not in dispute that the complainant has filed various

cases and complaints against the society and its members. In some cases complainant got relief from the court, but not in all. Perusal of all the documentary evidence on record sufficiently shows that the complainant is in habit to raise each and every issue and challenge the same in the court and to file complaints with various authorities, be it necessary or unnecessary. The long standing disputes and cases, its persuasions, decisions, appeals, leads frustration amongst the members and developed the feeling of harassment. Thus, they decided to expel the member i.e. the K.V. Shet, the mother of complainant. Same is elaborated and evident from the evidence of accused, who narrated and deposed all facts as argued.

15. Section 35 of the MCS Act and Rule 23 of Maharashtra Society Rules, 1961 provides expulsion of a member as following :-

Any member who has been persistently defaulting payment of his dues or has been failing to comply with the provisions of bye-laws regarding matters in connection with the dealing with the society or who, in the opinion of the committee has brought disrepute to the society or has done other acts detrimental to the interest or the proper working of the society may, in accordance with the provisions of subsection 1 of 35 be expelled from society. Expulsion from membership may involve forfeiture of shares held by the member.

16. Thus, the expulsion is provided and can be invoked against the member, when the acts of member is in the opinion of committee of the society has brought disrepute to the society or has done acts detrimental to the interest or the proper working of the society.

17. The accused persons in view of their defence proved certain facts which shows that the complainant has filed some false cases and disrepute the society and its members. The first that she challenged the resolution passed by the general body meeting by filing a dispute CC No.CC/II/154/2012. Same was rejected. However, in appeal her dispute was partly allowed on technical grounds. Raising such issue which was resolved for common interest of all members though legal cannot be said to be proper in the context of other several complaints and conduct of the complainant.

18. The second was that, she has lodged complaint vide letter dt. 27.01.2012 Article-L to the *Brihan Mumbai Mahanagar Palika* against the Society for alleged illegal water connection at the society. The complainant admitted that she has lodged said complaint during her cross-examination. The reply of the BMC Article-K states that there is no such illegal connection of water to the complainant. When said Article-K, confronted to her during cross-examination, she conveniently replied that she is unaware of the said reply. Which, certainly falsify the alleged complaint raised by her. Which, obviously has tendency to cause disrepute to the society.

19 The third one is that the complainant has lodged criminal complaint under section 381 r/w 471 of MMC before Metropolitan Magistrate, court No.39, Vile Parle, against her neighbor Flat No.20 complaining banging noise due to security door. Said complaint was dismissed and neighbors were acquitted as per judgment and order dt. 12.05.2010, Article-J. Which she failed to explain. On the contrary she

deposed that action was taken and the BMC has demolished the structure. But failed to brought on record any such order. Which, again fortified the defence of accused showing the conduct of complainant in making unnecessarily issues and filing cases.

20. These are the complaints which fortifies and shows probability of defence raised by the accused. The accused thus deposed and argued that the meeting of the society was cancelled by an order of the authority and the authorized officer of H/E ward. The revised agenda was approved and the meeting was conducted by the authorized officer *Shri. Nilesh Chavan*. Same has find reference in the letter Exh-11. The order of such cancellation of meeting Article-N is not admitted in evidence. But, the fact remains that the meeting was cancelled by an order of Asst. Registrar, though complainant called the same as a fraudulent order pointing out error in the date of order. As already observed same is not decisive.

21. The issue regarding nuisance of water pump had also been complained by the complainant with the various authorities. She not only lodged report with the BMC, police but also with the consumer Forum. No doubt, interim order was passed in her favour, but the complaint was dismissed and same was restored in appeal and later on allowed granting compensation to the complainant.

22. As rightly argued by the defence, this episode of water pump noise and conduct of complainant shows unnecessary haste and lack of patience. She filed complaint with the committee on 14.10.2012. With BMC on 19.10.2012 Exh.19. and with police on 20.10.2012

Exh.21. She didn't wait till action from BMC. Which inspected the pump and replied complainant informing escalation of issue with committee members vide reply Exh.20. Dated 29th October. This haste in filing complaints with all authorities including police shows the attitude of complainant in dealing the issues of society. There appears no offence committed, specifically by the accused No.1. It's the defect in pump. Which could be the mechanical defect and not caused by the accused. The police could hardly do anything as no criminal intendment seen. It is evident from the deposition of complainant during cross-examination that she is unaware about the inspection of water pump by the engineer appointed by the committee. She did not allow the police or the engineer to enter her flat to check the nuisance inside the house. There is no evidence that the fault in water pump was creating nuisance inside the flat which is lying at the first floor, whereas the water pump is at ground floor. That too when no member from other floors made any such complaint. Which, she again conveniently deposed unaware about.

23. It can be seen that complainant has misused said interim order of Consumer Forum and brought into the action the police machinery and government machinery to pressurize said society and its member to undertake her complaint without following the procedure. Therefore, the accused No.1 & 2 were spent 2-3 hours in the police station and to visit the police station unnecessarily to deal with the NC complaints filed by the complainant. The defence that complainant being lady advocate misuse her position and pressurized the government machineries by threatening them and therefore government machinery were also acted promptly cannot be ruled out.

24. Accused deposed that the 17 members of the society on 21.10.2012, lodged complaint against the complainant with the Nirmal Nagar Police Station alleging that the complainant is habituated in complaining petty things which are not in existence like water pump noise, door banging noises of the neighbors, noise of parking of the cars in the society, lift is not working, air condition water noise, illegal water connection etc. etc. As such, for some or other reasons she used to fight with the remaining 27 members of the society and get sympathy from the statutory government officers on the ground that she has old mother and ailing sister. The 17 active members thus lodged complaint with the police Exh-D-5.

25. Perusal of said complaint, Exh-D-5, shows that almost all the members have had lot of grievances against the complainant. The complainant had admitted filing of this complaint, as she admitted that she also wrote to the police to make inquiry against this complaint. It is argued by the complainant as the complaint was not inquired or she being never called same is the false complaint.

26. The complaint Exh. D-3 lodged by the accused No.2, dt. 08.12.2012 also shows that the complainant has took police to the house of accused No.2 at about 12.00 a.m. The NC complaint lodged by the accused No.1, dt. 15.10.2013 also shows threatening given by the complainant to the accused No.1. The NC complaint Exh-D-4 lodged by the accused No.2, against complainant for threatening for filing criminal case again fortified the conduct of the complainant. Which he conveniently not explained deposing either she is non aware or she being never called or no action taken against her.

27. Not only this, the demeanor of complainant has also been recorded during recording the evidence of accused by the learned predecessors as she persistently disturbed and passed comments. Same conduct noticed by this court during arguments, which leads in directing the defence council to file written arguments. Which nothing but shows the cantankerous behavior of the complainant and lack of patience.

28. Filing of repetitive complaints and giving threatenings and creating fear in the mind of the members of filing complaints is thus found the main reason for the proposal of expulsion of the mother of complainant. Thus, not only the truth and the falsity of the complaints lodged by the complainant against the members of society and by the members against the complainant is fact-in-issue in this case, but also the conduct, behavior and approach of complainant in pursuing legal matter and taking advantage of these legal proceedings to create fear psyche in the mind of members and to threaten them to the legal action, *qua* reputation of complainant.

29. Nobody can say that the filing of the complaints with the authorities to protect the rights is an illegal act. In fact its most cherished right and has to be enforced. But, nobody can suppose to misuse said right under the guise of its enforcement. Thus, the approach in pursuing the complaints and raising any petty issue is the decisive to decide the present complaint. The complainant seems to have failed in showing that her approach was genuine and she had really faced all the issues she raised by filing various cases. She not only filed the legal

complaint and obtain some orders, but also filed some false cases and use the same to harass the members.

30. The deposition of accused and the argument that only the complainant has problem in the society is thus found probable in the facts and circumstances of the case. If really she has suffering from any such issue, the other members should also have also suffered. Why only she been unnecessarily targeted by the accused is remained unexplained. Except the complainant no other member made any complaint ever to any authority. In fact, many members have made complaints against the complainant and with the police and managing committee. Therefore, the managing committee had decided to take the issue to expel the mother of complainant. Therefore, the proposal to discuss the issue on behalf of all the members being Honorary secretary of the society does not make liable the accused No.1.

31. The evidence does not suggest any personal grudge against the complainant as the accused No.1, was not the party to the proceeding of Consumer Forum or any other previous proceedings. Secondly, the accused No.1, has represented the common will of the members of the society qua complaint Exh.D5. The publication of agenda of AGM is the part of procedure and no intention thus, attributed as alleged.

32. In these circumstances, though the publications and imputations are prima-facie defamatory, shows no intention to defame the complainant. The issue of expulsion was to be discussed amongst the members in the meeting, where the complainant would have every

opportunity to represent herself. It is the matter of reputation for which complainant has lodged this complaint. Thus, complainant has to show that she had a reputation amongst the members of her own society. No evidence brought in this respect. Despite, specific defence raised as to truth of contents, complainant failed to examine any society member to show that complainant holds reputation as she claimed.

33. **Reputation** literally means the commonly held opinion of a person's character, of a group of people or about an organization. It is the esteem in which a person held by others. Reputation can be *ubiquitous* or spontaneous. It is the efficient mechanism of social control in natural societies. What is esteem of complainant in the opinion of the society members is thus become most relevant. The publication is not made public to disrepute the complainant in the outside world, though the effect of result of such proceeding would harm her reputation qua outside society through her mother. Thus, there appears no intention or knowledge to defame the complainant in publishing the agenda. The defence of the accused is probable, plausible and reasonable. The accused have explained their defence in the written statement submitted while recording statement under section 313 of Cr.P.C. Thus, the acts of the accused covers under the exception 1 and 9 of the Section 499 of the IPC. And he entitled for the protection of the same.

34. Coming to the maintainability of case at the instance of complainant, it is found that same is not maintainable. Firstly, because the agenda for the annual general meeting published for the expulsion proceeding of member K.V. Shet i.e. mother of complainant for filing

false civil/criminal and other cases through her daughter S.V. Shet. So the imputations as to filing false cases is made against the mother of complainant. The complainant in her cross-examination admitted that all the cases were filed in the name of mother and she is acted as an Advocate. Therefore, for said cases, it is her mother who is responsible in her personal capacity and not the complainant in her capacity of advocate. Therefore, the Explanation 2 to 499 of Cr.P.C. cannot be read that the complainant despite filing complaints as an advocate is included in the body of person. In fact, the term '*body of person*' in Explanation 2 has to be read in *pari-materia* with the words '*company*' or '*association*' as the '*term body of persons*' is followed with the words '*as such*'. Thus, the Explanation 2 is provided the complaints to be filed by the artificial legal entities which does not include the joint family.

35. Thus, the complaint is found barred under section 199 of Cr.P.C. The aggrieved person referred in 199 of Cr.P.C. is referred with specific aggrieved person and cannot be read in general. When the complainant is appeared for her mother in the capacity of advocate, she cannot be said to an aggrieved person. In these circumstances and in the absence of evidence of the mother of the complainant about the alleged offence, the evidence of the complainant cannot be admitted as an aggrieved person in the context of the agenda of meeting. Thus, the complaint is not maintainable.

36. Having regard to the facts, circumstances of the case and evidence on record, the complaint failed as the accused raised probable defence and the complaint is itself barred under section 199 of Cr.P.C. consequently, the charge under section 506 I.P.C. does not attract.

Accused, entitled acquittal. Accordingly, I recorded findings and pass following order :-

ORDER

- 1] Accused *Mr. Rajendra Kumar Jain* stands acquitted of the offence punishable U/Secs. 500 & 506 of IPC as per section 255(1) of the Cr.P.C.
- 2] The bail bonds of accused allowed to be continued vide separate order. The accused shall execute fresh P.R. bond as directed vide Sec.437 (A) of Cr.P.C.
- 3] Pronounced in open court.

Sd/-

(Sudhir N. Shinde)

Metropolitan Magistrate,
32nd Court, Bandra, Mumbai

Dictated on : 12.03.2019
Transcribed on : 12.03.2019
Signed on : 12.03.2019
ssl.