

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Revision Application No. 16 of 2015

Anna s/o Pandurang Akhade.

.. **Petitioner.**

Versus

The State of Maharashtra
And Others.

.. **Respondents.**

Shri. S.R. Sapkal, Advocate, for petitioner.

Smt. R.K. Ladda, Additional Public Prosecutor, for
respondent No.1.

Shri. Shrimant R. Mundhe, Advocate, for respondent
Nos.2 and 3.

CORAM: T.V. NALAWADE, J.

DATE : 17th JULY 2015

ORDER:

1) The proceeding is filed to challenge the order made by the Judicial Magistrate First Class on Exhibit 1 in R.C.C. No.733/2011 by which private complaint filed by the present petitioner came to be dismissed and also the judgment and order of Criminal Revision No.75/2013 which was filed by the petitioner to challenge the order of the Judicial Magistrate. Both the sides are heard.

2) The private complaint was filed for offences punishable under sections 218, 219, 220, 500, 34 of the Indian Penal Code against respondent Nos.2 and 3. Allegations are made that the complainant's wife had some litigation with accused No.1 and the suit was decided against accused No.1 on 21-3-2007. It is contended that only to harass the complainant, accused No.1 gave false report to Police Station Pimpalner and accused No.2 who was working as constable at the relevant time joined hands with accused No.1 and gave report to Executive Magistrate for starting chapter proceeding against the complainant. It is contended that on 30-6-2011 the complainant and his wife were called to police station and they were taken in custody by accused No.2 and then they were produced before Executive Magistrate with the report for starting chapter proceeding under section 107 of the Code of Criminal Procedure. It is contended that due to this action they are defamed in the society. It is contended that as false proceeding was filed against the complainant and his wife, he had made complaint against accused No.2 to the District Superintendent of Police but no action is taken by the

Superintendent of Police and so he was required to file complaint.

3) The Judicial Magistrate dismissed the complaint under section 203 of the Code of Criminal Procedure by observing that aforesaid offences are not made out even if it is presumed that report was given by police for starting chapter proceeding. The learned Sessions Judge has observed that the police officer was discharging his duty and so provision of section 197 of the Cr.P.C. would come in the way of the Judicial Magistrate to take cognizance of the offence.

4) The submissions made show that when the complaint was filed, chapter case was still pending. If there is some defamation and accused No.1 had taken some steps *mala fide*, separate action can still be taken by the complainant after decision of the chapter case. However, for taking action against the police constable, who was discharging his duty there will be necessity of sanction. This Court holds that there is no reason to interfere in the order of the Magistrate and the decision of

the Sessions Court. Further the present revision is filed under section 397 of the Cr.P.C. against the decision of the Sessions Court delivered in the revision filed under section 397 of the Code by petitioner. In the result, the revision stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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