

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

Criminal Writ Petition No.389 of 2014

Priti W/o Prashant Bairagi.

.. Petitioner.

Versus

The State of Maharashtra
And Another.

.. Respondents.

Shri. Rahul R. Karpe, Advocate, for petitioner.

Shri. S.A. Ambad, Additional Public Prosecutor, for
respondent No.1.

Shri. R.D. Biradar, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 23rd JUNE 2015

ORDER:

1) The petition is filed to challenge the order of issue process by the learned Judicial Magistrate First Class Aurangabad in SCC 1996/2011. Learned Judicial Magistrate has issued process for offence under section 500 of the Indian Penal Code. Revision was filed against the this order bearing Criminal Revision No.97/2012 but

the revision is dismissed by the Sessions Court and so this decision is also challenged. Both the sides are heard.

2) Private complaint is filed by respondent No.2 and she has contended that she is defamed by making false allegations against her by the present petitioner in a proceeding filed under the Protection of Women from Domestic Violence Act, 2005 (Application No.596/2011). In the said proceeding at para 8 the accused, present petitioner had contended that present respondent No.2 is the keep of the husband of the present petitioner and they had illicit relations. She had contended that present respondent No.2 had married three times and she was inducing and deceiving rich persons, she was grabbing property of rich persons and she was destroying the families. As there are allegations of aforesaid nature, in the private complaint filed for offence of defamation, present respondent No.2 has contended that many relatives and colleagues started making enquiry due to the aforesaid contentions made in the proceeding and as the matter became public due to argument advanced in open Court, the allegations became public and many

persons started discussing this contention. It is her case that due to this defamatory allegation which is false, she has suffered both mentally and economically and she will not be able to make any career due to such allegation and she has suffered irreparable loss.

3) Learned counsel for the petitioner has placed reliance on some observations made by the Apex Court in the case reported as **AIR 1971 SC 1567 (Sukra Mahto v Basdeo Kumar Mahto)**. Relevant observations are as under :-

"The proof of the truth of the statement is not an element of the Ninth Exception a of the First Exception to Section 499. In the Ninth Exception the person making the imputation has to substantiate that his enquiry was attended with due care and attention and he was thus satisfied that the imputation was true. The accent is on the enquiry, care and objective and not subjective satisfaction.

There is no evidence to show that before making the imputation the appellant had made any enquiry in good faith and the appellant had not shown due care and attention before making the imputation. By reason of the findings of fact that the appellant did not act with care and caution and secondly that the appellant was related to the respondent and thirdly that no enquiry was made by the appellant, the appellant could not claim good faith."

In the proceeding which was filed to challenge the decision of conviction the aforesaid observations were made by the Apex Court. There cannot be dispute over the propositions made by the Apex Court. In the proceeding filed under the D.V. Act there was no need to make present complainant party and such proceeding is apparently not tenable against complainant. Thus aforesaid requirement which needs to be fulfilled for using the exceptions given to section 499 of Indian penal Code are not there in favour of petitioner.

4) The learned counsel for the petitioner has produced copy of judgment delivered in State Case filed for offence under section 452 of the Indian Penal Code against the petitioner on the basis of report given by the respondent. It appears in RCC No.2033/2010 allegations were made against the present petitioner that she has trespassed into the house of the present respondent, she had quarrelled by making allegations that she had kept relations with the husband and due to that, there were matrimonial dispute. The petitioner came to be acquitted. Thus it can be said that similar allegations were made by

the present petitioner against the respondent on one more occasion. In view of these circumstances, this Court holds that it is not possible to set aside the order of issue process.

5) In the result, the petition stands dismissed.

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

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