

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

CRI. WRIT PETITION NO. 3366 OF 2012

Shri Ravindra Harishchandra Bhosale ... Petitioner.

V/s.

Shri Nivrutti Keshav Sonawane & Anr. ... Respondents.

Mr. Surel S. Shah, Advocate for Petitioner.

Mr. S.S.Lanke a/w. M.A.Parab i/by M/s. S.S. Lanke for
Respondent No.1.

Mr. Ajay Patil, A. P.P. for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 18th JUNE, 2015

P.C. :

1 Heard the learned counsel for the parties.

2 The petitioner/applicant is facing trial for the offences punishable under section 504 and 506 of the Indian Penal Code. The petitioner is practicing Advocate at Wai. One Sushila R. Kamble had filed a suit against nephew of the Respondent No.1. The petitioner's Advocate Mr. Bhosale appeared on behalf of the nephew of respondent no.1 -Nivrutti K. Sonawane. The suit was decreed in favour of the Sushila Kamble.

3 It was the case of the complainant -respondent no.1 Nivrutti K. Sonawane that he himself and his nephew had gone to Wai Court to inquire from the petitioner as to how the suit was decreed in favour of Smt. Sushila Kamble. During the course of conversation, it is alleged that the petitioner had assaulted the complainant/ respondent no.1. Respondent No.1 had moved the police where his complaint was treated as non-cognizable. He, therefore, filed a private complaint in the court of Judicial Magistrate at Wai. Process was issued against the petitioner for the offences punishable under sections 504 and 506 of the Indian Penal Code. By order dated 7th June 2012, the revision filed by the petitioner has been dismissed.

4 The learned Magistrate before issuing the process against the petitioner had called for report of the police. The police report clearly stated that no incident of assault had ever occurred on the date of the alleged incident. The police have recorded statements of some independent witnesses who were present in the corridor. They have stated in the statements that no such incident had ever occurred. The learned Magistrate after having gone through the complaint and verification came to the conclusion that a prima facie case was made out and, therefore, he had issued process. As already stated, the revision application has been dismissed.

5 I have gone through the complaint and the police report. The police report clearly states that no incident as alleged had happened in the court. The witnesses who were present in the court premises throughout the day on the date of the alleged incident have stated in their statements that they were present in the court premises during the course of the day and that they had not heard any noise and had no occasion to see any incident, as alleged by respondent no.1. The learned Magistrate despite this report has issued process. The order of the learned Magistrate does indicate that the police report was not taken into consideration.

6 The learned Sessions Judge has also ignored the police report. If both the courts below have ignored the police report, it was necessary for them to record reasons for the same, particularly when the order does not confirm the police report. Though the complainant and his nephew had given statements which are consistent, the learned trial Judge could not have ignored or rejected the evidence of the independent witnesses.

7 In view of what has been stated by me, it is abundantly clear that there are independent witnesses who have stated that nothing in the nature of the alleged incident had occurred in the court premises on the date of the incident.

8 It, therefore, follows that the criminal writ petition will have to be allowed and it is accordingly allowed. The order passed by the learned Magistrate, issuing process and the order passed by the Sessions Court, rejecting the revision application are set aside.

9 The petitioner is discharged of the offence. The process issued against the petitioner for the offences punishable under sections 504 and 506 of the Indian Penal Code is hereby quashed.

(JUDGE)

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