

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 4271 OF 2012

Suresh Bajirao Salunkhe

.....Petitioner

V/s.

Madhukar Pandurang Salunkhe and others

....Respondents

Mr. Vaibhav Parshurami i/b

Mr. Abhijeet Gosavi Advocate for Petitioner

Mr. S. R. Chitnis, Senior Counsel a/w

Mr. S. R. Phanse i/b Mr. Ashish Sawant Advocate for
respondent nos. 2,3,5,6, 8 to 12, 14, 19, 20,
24, 26, 30 to 34, 36 to 40, 42, 45 & 52.

Mr. vikrant Parshurami Advocate for respondent nos.
4,7,13,16,18,21,22,23,25,29,41,47 & 53.

Ms. G. P. Mulekar APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : SEPTEMBER 2, 2015.

PC :

Heard respective counsel.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) Petitioner herein impugns the order dated 22/10/2012 passed by Additional Sessions Judge, Satara, thereby allowing revision application filed by present respondents as consequence of which order of issuance of process passed against respondents by learned Judicial Magistrate First Class Mahabaleshwar in R.C.C. No. 127 of 2010 is quashed and set aside.

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4) The facts leading to filing of present petition are as follows.

5) Petitioner herein had filed a complaint under section 2 (d) of Code of Criminal Procedure, 1973 before Judicial Magistrate First Class at Vai against 64 persons alleging therein that petitioner/complainant belongs to 'Chambhar' caste. Respondent nos. 1 to 62 also belong to the same caste. According to the petitioner, all accused persons had envied the position of the petitioner as he had assumed high status and therefore members of his community were implicating him in false cases by lodging report against him at the police station. It is alleged that on 12/05/2008, accused persons had made a representation to the District Collector, Satara. It was contended in the said representation that petitioner is a habitual offender, he is a money lender, he has a criminal aptitude, he terrorizes the people. According to the petitioner, the language of the representation was such that petitioner would be exposed to social obloquy and a farce was made that the allegations levelled against petitioner should appear to be true. That all the accused have signed the said representation. It is also alleged in the said representation that petitioner has filed false cases under the

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provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (S.C. and S.T. Act.) That the accused in the first case under the S.C. & S.T. Act was convicted by the Sessions Court. Petitioner has further contended in the said complaint that no offence is proved against the petitioner. That the members of his community have dragged him. According to the petitioner, members of his community had given a copy of the representation to the local newspapers and the representation was published in the local newspaper Dainik Aikya and Dainik Lokmat on 13/05/2008. That accused nos. 63 to 68 who happen to be editors of the newspapers had not verified the genuineness of the news and had published the same. According to the petitioner, he has been defamed in the society and hence he had prayed that accused be prosecuted for offence punishable under section 500 of Indian Penal Code and be tried in accordance with law. It was also contended that several accused had tendered apology to the petitioner and therefore, he had dropped the prosecution against them.

6) Learned Magistrate had recorded the verification of the
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complainant and had issued process against all accused i.e. accused nos. 1 to 64 for offence punishable under section 499, 500 r/w 34 of Indian Penal Code.

7) Being aggrieved by the said order of issuance of process, accused had filed criminal revision application no. 140 of 2010 before Sessions Court at Satara. Learned Additional Sessions Judge vide Judgment and Order dated 22/10/2012 was pleased to allow revision application and has quashed the process against the accused for offence punishable under section 499 and 500 r/w 34 of Indian Penal Code. Hence, this writ petition.

8) Learned Revisional Court unhesitantly and rightly held that no prima facie case against the accused was made out because there was sufficient prima facie evidence on record that the petitioner was accused in crime no. 20 of 1999 and 12 of 2008. That N.C. cases were registered by filing chapter cases under section 107 of Code of Criminal Procedure, 1973. Four chapter cases were filed against the petitioner. The police department had also initiated externment proceedings against the petitioner under section 56 of Bombay Police Act. It is true

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that S.D.P.O. had rejected the proposal on technical grounds. Revisional Court had also observed that proceedings were filed against petitioner under section 144 (1), (3) of Code of Criminal Procedure, 1973 in chapter case no. 2 of 2008. Petitioner had also assaulted one of the alleged accused namely Sagar Salunkhe. The totality of circumstances would lead to an inference that the petitioner was involved in several criminal cases and was shown as accused. The members of the community had made a representation before District Collector on the basis of records and had demonstrated that petitioner was in habit of committing breach of peace. In view of this, it cannot be said that the representation made by respondents was baseless or that a false representation was made to the District Collector.

9) Learned counsel for the petitioner submits that petitioner has been acquitted in most of the cases and therefore, it can be said that respondents accused had made incorrect representation to the District Collector.

10) Upon perusal of records, it appears that representation was made to the Collector against the petitioner on 12/05/2008. The people

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making representation had given several instances of the activities of the petitioner. Petitioner was acquitted in criminal case no. 12 of 2000 by Judicial Magistrate First Class, Vai on 28/10/2009. Petitioner was acquitted in R.C.C. No. 88 of 2010 vide Judgment and Order dated 31/01/2012. It is pertinent to note that petitioner was accused in R.C.C. No. 12 of 2000 in a case which was registered on 18/12/1999. In R.C.C. No. 88 of 2010, petitioner was shown as accused in crime no. 12 of 2008. That the proceedings under the Bombay Police Act were dropped by an order dated 08/06/2010 by S.D.P.O. Vai. This would show that he was accused in all these cases on the day when the representation was made and therefore, it cannot be said that they were baseless allegations due to which he can be exposed to social obloquy.

11) Upon perusal of news items, it appears that all that is published in the newspaper is that people of the said community have filed a representation on behalf of the community and as members of community. The contents of the representation were reproduced in the news item. It therefore, cannot be said that it was not necessary for

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publishing house to verify the genuineness of the complaint. The members of the community had given a copy of the representation to the publishing house and the same was reproduced. It therefore, cannot be said that respondents had defamed the petitioner in the eyes of law. The representation was made to the District Collector and the members of the community had specifically made an averment in the representation that time and again they have made representations to the police authorities to take action against the petitioner who not only indulges into breach of peace, but is terrorizing general public at large. There was a grievance in the representation that police are not taking any action against the petitioner. Additional Superintendent of Police, Satara had also called for the records as he was prima facie of the opinion that petitioner could be prosecuted under the provisions of Maharashtra Prevention of Dangerous Activities Act, 1981. It is therefore clear that the representation was made to an authority which was implementing Law and Order.

12) Section 499 (Ninth exception) of Indian Penal Code contemplates as follows:

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“It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.”

13) From the records, it is clear that the present case would fall under ninth exception of section 499 of Indian Penal Code and therefore, learned Revisional Court has rightly allowed the revision application and quashed the proceedings against the respondents.

14) Learned counsel for the petitioner vehemently submits that some of the accused had tendered apology and therefore, they were not prosecuted. According to him, it was incumbent upon present respondents also to tender an apology to him since he had been defamed in public view.

15) As against this, learned senior counsel appearing for respondents submits that the very fact that the case squarely falls within the ambit of ninth exception of section 499 of Indian Penal Code, there was no reason for the respondents to tender an apology to the petitioner since they are of the firm opinion that they have not defamed the petitioner.

16) The reasons recorded by learned Revisional Court are justifiable. The order passed by learned Revisional Court is in accordance with law and therefore, it does not warrant any interference. Hence, following order.

ORDER

- (i) Writ petition stands dismissed.
- (ii) Rule is discharged in above terms.

(SMT. SADHANA S. JADHAV, J.)