

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2395 OF 2007

1. Sau. Sangita w/o Pandharinath Pachpute,
Age 41 years, Occu. Household,
R/o Kedgaon, Ahmednagar,
District Ahmednagar.
2. Kailas Magan Shinde,
Age 39 years, Occu. Agri.,
R/o Dhondepargaon, Tq. Jamkhed,
District Ahmednagar.
3. Sumanbai Dnyandeo Jagtap,
Age 42 years, Occu. Household,
Residing near Pach Godown,
Kedgaon, Ahmednagar,
District Ahmednagar.

... **APPLICANTS**

VERSUS

1. The State of Maharashtra.
(Copy to be served on the Public Prosecutor
High Court of Bombay, Bench at Aurangabad).
2. Sau. Janabai w/o Raosaheb Hodshil,
Age 43 years, Occu. Household & Business,
Residing at opposite Zanzani Mata Temple,
Subhas Nagar, Dhule, District Dhule.

... **RESPONDENTS**

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None present for the Applicants.

Mr. S. P. Tiwari, APP for Respondent No.1 / State.

Mr. R. S. Shinde, Advocate for Respondent No.2.

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CORAM : **V. K. JADHAV, J.**

DATE : 22nd November, 2016.

ORAL JUDGMENT:

. None present for the Applicants.

2 On 16th September, 2016, the learned counsel for the parties sought two weeks time to obtain specific instructions from their respective clients whether the matter is amicably settled between them or not.

3 By this criminal application, the Petitioners / original Accused in S.T.C. Case No.479 of 2006, pending before the Chief Judicial Magistrate, Dhule and S.T.C. Case No.29 of 2006, pending on the file Judicial Magistrate First Class, Dondaicha, District Dhule, are seeking transfer of those cases filed by Respondent No.2 to Judicial Magistrate First Class Court either at Aurangabad or Beed or Nashik district.

4 It has stated in the application that the husband of present Petitioner No.1 is serving in the police department and he was posted at Azadnagar Police Station, Dhule. The husband of present

Respondent No.2 / original Complainant is a Journalist and Respondent No.2 is the Editor, Printer and Publisher of Weekly Newspaper "Rayat Morcha". At the relevant time, when the husband of Petitioner No.1 was posted at Azadnagar Police Station, Dhule, certain complaints came to be filed against Respondent No.2 herein and her husband and they have also filed complaint against some of the residents. The husband of present Respondent No.2 wanted some extra favour, however, the husband of Petitioner No.1 did not agree with them. Consequently, Respondent No.2 and her husband started publishing some defamatory articles in the said weekly against the husband of Petitioner No.1. In the light of such defamatory articles published in the said weekly, Petitioner No.3 herein filed S.T.C. Case No.4825 of 2005 against Respondent No.2 and her husband in Ahmednagar Court and Petitioner No.2 also filed S.T.C. Case No.574 of 2005 in Jamkhed Court against them. Both the cases were filed against them for having committed an offence punishable under Section 500 of the Indian Penal Code in regard to publication of defamatory article. Even the husband of Petitioner No.1 instituted Special Civil Suit No.5 of 2004 against Respondent No.2 for compensation on account of some defamatory article published in the

said weekly. The said suit came to be dismissed. However, the relations between the husband of Petitioner No.1 and Respondent No.2 and her husband became strained. Consequently, husband of Petitioner No.1 came to be transferred. However, Respondent No.2 has filed S.T.C. Case No.479 of 2006 on 21st January, 2006, in the Court of Chief Judicial Magistrate, Dhule against the present Petitioners for having committed an offence punishable under Sections 323, 504 and 506 read with 34 of the Indian Penal Code and filed another complaint bearing bearing S.T.C. Case No.29 of 2006 before the Judicial Magistrate First Class, Dondaicha against the present Petitioners for having committed an offence punishable under Sections 323, 504, 506 and 511 read with 34 of the Indian Penal Code. It has further stated in the application that the said complaints are false complaints and have been filed to cause hardship and inconvenience to the Petitioners. Respondent No.2 in order to set score with the husband of Petitioner No.1, filed two aforesaid complaints with malafide intention. It is further contended in the application that the Petitioners apprehend that Respondent No.2 and her husband would file some more vexatious complaints and cases against them whenever the Petitioners would go to attend the Court.

The Petitioners, therefore, preferred this criminal application for transfer of those cases to the Judicial Magistrate First Class Court either at Aurangabad or Beed or Nashik district for disposal in accordance with law.

5 On perusal of the said complaints, it appears that specific incident alleged in the said complaint and accordingly, the aforesaid complaints came to be filed before the Chief Judicial Magistrate, Dhule and Judicial Magistrate First Class, Dondaicha. Even in both the cases, the respective Courts have recorded verification statement of the Complainant. However, in both the complaints, the learned Magistrates have not issued any process against the Petitioners / Accused persons. Since the Courts have not issued any process till this date, in view of the provisions of Section 202 of the Code of Criminal Procedure. In case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, the Magistrate bound to postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding.

6 It is, thus, clear that both the Courts below have not decided to issue process against the present Petitioners / original Accused so far. It is, thus, quite pre-mature to file an application under Section 407 of the Code of Criminal Procedure seeking transfer of the cases when the Magistrate yet to form opinion about issuance of process against the Petitioners/ Accused. The Petitioners / Accused are at liberty to file such application for transfer of the cases in case, both the Courts below issue process against them in the respective complaints pending before it. With this liberty, the criminal application stands disposed of. Rule is discharged.

[V. K. JADHAV, J.]

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