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

CRIMINAL APPLICATION NO. 3819 OF 2015

Vishwas s/o Bapurao Chitale,
Age: 36 years, Occu: Advocate,
R/o. Bhushannagar, Kedgaon,
Ahmednagar,
Dist. Ahmednagar

..APPLICANT

VERSUS

1. The State of Maharashtra

2. Ashok s/o Vitthal Sonawane,
Age: 53 years, Occu: Editor,
R/o. 143, Ambar Plaza, 1st Floor,
In front of S.T. Bus Stand,
Ahmednagar

3. Parshuram s/o Pandurang Anbhule,
Age: 63 years, Occu: Agriculture,
R/o. Ghumri, Tal. Karjat,
Dist Ahmednagar

4. Vikas s/o Parshuram Anbhule,
Age: 33 years, Occu: Service,
R/o. Ghumri, Tal. Karjat,
Dist. Ahmednagar

..RESPONDENTS

Mr A. S. Pavse, Advocate for applicant;
Mr S. D. Ghayal, Addl. Public Prosecutor for respondent No. 1;
Mr R. B. Temak, Advocate for respondent No. 2;
Mr A. Y. Pandule, Advocate for respondent No. 3 and 4

CORAM : N.W. SAMBRE, J.

DATE : 27th June, 2016

ORAL ORDER :

This is an application seeking leave to file appeal, as the respondent
Nos. 2 to 4 were acquitted by the learned Judicial Magistrate First Class,

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Court No. 5, Ahmednagar, for the offences punishable under Sections 500, 501 and 502 of the Indian Penal Code.

2. The complaint case is based on the provisions of Section 199 of the Code of Criminal Code, which provides for filing of offence punishable for defamation.

3. In the present case, it is claimed that the news items published against the applicant, which was defamatory.

4. The complaint case bearing S. T. C. NO. 2817 of 2012 was heard by the learned Magistrate and in support of the allegations, as are claimed against respondents - accused, the applicant has examined himself as P.W.1. The applicant, then examined Devidas Vitthal Pandharkar - P.W.2 at Exh.52, Machhindra Bhausahab Jagdale – P.W. 3 at Exh.72, Satish Dashrath Chitale – P.W.4 at Exh.73. He also relied upon oral and documentary evidence, like copy of Sanad, issued by the Bar Counsel of Maharashtra and Goa at Exh. 45.

5. Learned Magistrate, while dealing with the evidence, has observed that the present applicant has not proved the case for defamation against the respondents - accused Nos. 1, 2 and 3, as the newspaper, which contained the defamatory news, has not been proved by the summoning any witness from the office of the newspaper in question. The Magistrate has also noted that, there is also no evidence on record to observe that the

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accused Nos. 1, 2 and 3, got the said defamatory news item published and the allegations against present applicant, made in the said news item, were incorrect.

6. While seeking leave, learned Counsel for applicant submits that the applicant be granted liberty to prove his case by remanding matter, so that the applicant will be in a position to summon the witnesses from the office of the newspaper, to establish that the defamatory news item was published by the accused persons in the newspaper and reputation of the applicant was shattered. He would then submits that the evidence on record is not properly appreciated by the learned Magistrate. So as to substantiate his contention, he invited attention of this Court to the statement by the accused-publishers, recorded under Section 313 of the Code of Criminal Procedure, wherein they have admitted that the news item was published by them.

7. With the assistance of the learned Counsel appearing on behalf of the respective parties, I have scanned the entire judgment, delivered by the learned Magistrate. It is required to be noted that, so as to prove that the defamatory news item was published by the accused persons in newspaper, was at all not proved by the applicant. The applicant-complainant is trying to take support of the statement recorded under Section 313 of the Code of Criminal Procedure, of the accused-publishers, so as to make this Court, to infer that there is enough material to reach to the conclusion that the defamatory article in fact published by the accused

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persons.

8. In my opinion, such claim as is sought by the applicant, particularly in view of the statement of the accused persons recorded under Section 313 of the Code of Criminal Procedure, for proving his case, will be of hardly any assistance.

9. The applicant, in my opinion, has independently required to prove the said facts, by summoning proper witness in support thereof. Apart from this, there is hardly any material on record to observe that the applicant has proved his case, that there was a publication of defamatory material by the accused-publishers and the accused persons have committed the offence.

10. In the above background, in my opinion, no case for grant of leave to file an appeal is made out. Criminal Application fails and stands rejected.

(N.W. SAMBRE, J.)

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