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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2896 OF 2015

Kiran Uttam Sakpale

..Petitioner.

Vs.

Dnyandeshwar Rajirkar & Ors.

..Respondents

Mrs. Deepa Kamat for Petitioner.

Mr. Vivek Salunke i/b S.G. Sanap for Respondent Nos.1 to 6.

Mr. Deepak Thakare, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 7th March 2016.

P.C.

1 The present petition under Article 227 of the Constitution of India is directed against the judgment and order dated 7th May 2015 passed by the learned District Judge-6 And Additional Sessions Judge, Nashik in Criminal Revision Application No.30 of 2015. By the impugned order dated 7th May 2015, the Trial Court has set aside the order of issuance of process dated 4.12.2014 passed by the Trial Court in R.C.C. No.1052 of 2014.

2 The petitioner is the original complainant in R.C.C. No.1052 of 2014, filed on 7.10.2014 in the Court of Chief Judicial Magistrate, Nashik. In the said complaint the petitioner has stated that he was working as a Junior Clerk in the Tender Department of Zilla Parishad, Nashik. The respondent Nos.1 to 6 herein are the alleged original accused Nos.2 to 7 in the said complaint and are the higher authorities then working with the Zilla Parishad, Nashik. The petitioner, in the said complaint has alleged that the Executive Engineer used to order Branch Engineer to provide work to the educated unemployed Engineers who were in his good-books. The said work was distributed under the signature of the Executive Engineer without effecting entries in the Inward or Outward Registers. The complainant was thereafter held responsible for the mismanagement of allotment of work and for not keeping the record properly. The petitioner/complainant was subsequently suspended from the work in the year 2006. It is the grievance of the complainant that no other persons from the said establishment were held responsible and no proceedings were initiated against anybody else. The complainant was solely held responsible for the said act of commission and/or omission. The complainant stated that the said suspension was with malafide intention at

the behest of the Executive Engineer and all other higher authorities. The complainant thereafter made a representation and/or complaint with the other authorities, exposing the corrupt practice adopted by the respondents herein, however, no cognizance of his complaint was taken by any of the authorities. He has stated that the respondents being Government Officers, in conspiracy, manufactured bogus documents and caused loss to the Government. The complainant has further stated that due to his suspension for a period more than one-and-half years, he has suffered tremendous mental harassment. Though he lodged complaint with the police, police did not take cognizance of the same and therefore he was left with no other alternative, than to file the present complaint. The complainant prayed that an action under Section 156(3) of Cr. P.C. may be initiated against the respondents for the sections punishable under the provisions of IPC.

3 The learned Judicial Magistrate First Class, Court No.1, Nashik recorded the verification statement of the complainant on 3.11.2014. The learned Trial Court by its order dated 4.12.2014 issued process against the original accused nos.2 to 7 in the said complaint and the respondent Nos.1 to 6 in the present petition for the offences punishable under Sections 420, 465, 467, 468, 469, 471, 120-B read with Section 34 of the Indian Penal Code.

4 The respondent Nos.1 to 6 feeling aggrieved by the said order dated 4.12.2014 thereby issuing process against them, preferred a Criminal Revision Application No.30 of 2015 in the Court of Sessions, at Nashik. The Revisional Court i.e. the District Judge-6 and Additional Sessions Judge by its order dated 7th May 2015 was pleased to allow the said Revision Application and set aside the order dated 4.12.2014 regarding issuance of process against the respondent Nos.1 to 6. The said order is impugned herein.

5 Heard the learned Counsel for the petitioner, the learned Counsel for the respondent Nos.1 to 6 and the learned APP for the State. The learned Counsel for the applicant submitted that the Revisional Court has committed an error in setting aside the order of issuance of process against the respondent Nos.1 to 6. In support of her contention, she has placed on record various documents which she received under the Right To Information Act. She further submitted that the Revisional Court has not taken into consideration the fact that the complainant was suspended by the respondent Nos.1 to 6 herein for no fault on his part for a period of about one-and-half years. That as the complainant tried to expose the corruption in the Zilla Parishad, Nashik, he has been made scapegoat for the same.

She lastly submitted that the order passed by the Revisional Court is bad in law and therefore needs to be set aside.

6 The learned Counsel for the respondent Nos.1 to 6 vehemently opposed the present petition and submitted that the petitioner has failed to make out any case for issuance of process against the respondent Nos.1 to 6 herein. He submitted that the Revisional Court, after taking into consideration various aspects of the present matter has recorded the necessary and relevant findings and allowed the Revision Application. He submitted that no interference is necessary at the hands of this Court while exercising the writ jurisdiction under Article 227 of the Constitution of India. The learned APP submitted that appropriate orders may be passed in the interest of justice.

7 A bare perusal of the record discloses that the complainant/petitioner was working as a Junior Clerk in the Tender Department of Zilla Parishad, Nashik. He was suspended in the year 2006 from services for an act of omission or commission done by him during the course of his duties. The complaint is lodged in the year 2014 with vague allegations against the concerned. The complainant has not explained the delay caused in lodging the said complaint. It appears that as a counter-blast to the suspension orders passed by the higher authorities against him

and with a view to take revenge the petitioner has filed the private complaint. It further appears from the record that the learned Magistrate on the basis of verification statement of the complainant issued the process against the respondent Nos.1 to 6 herein. The authenticity of the allegations against the respondent Nos.1 to 6, who are the public servants, has not been verified by issuing or conducting an enquiry under Section 202 of Cr. P.C. The Revisional Court has come to the conclusion that there is no sufficient material to proceed against the accused persons much less for issuance of process in the present complaint. It has further held that due to private rivalry and to have a counter blast to the actions initiated against the original complainant, the present complaint has been filed.

8 After taking into consideration the entire record made available before me, I find that the observations made by the Revisional Court has substance in it. As stated earlier, I am of the considered opinion that the complaint filed by the petitioner is a counter-blast to the proceedings adopted by the respondents herein for suspension of the complainant for irregularities and/or acts of commission or omission committed by him during the course of his service.

9 In view of the above, I find that the Revisional Court has not committed any error of law or in facts and therefore interference with the

impugned order dated 7th May 2015 by this Court is not necessary. In view of the same, I find no merits in the present petition and the petition is accordingly dismissed.

(A.S. GADKARI,J.)