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FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3244 OF 2015.

Shivajirao Bhikoba Dhumal	..	..Petitioner
Vs		
The State of Maharashtra	..	..Respondent.

Mr Vishwajit Sawant i/by Mr. P.M. Jadhav for the petitioner.
Smt. R.V. Newton, APP for the State.
Mr. Kuldeep Nikam for the respondent No.2.

CORAM : A.S.GADKARI, J.
DATE : 5th May, 2016

P.C.

1) By the present petition, the petitioner has prayed for expunging adverse observations made against him, by the learned Additional Sessions Judge in the paragraph no.3 of its Order dated 16.7.2015 passed in Criminal Misc Application No.207 of 2015.

2) The respondent No.2 Shri Sambhaji Bhikoba Dhumal is an accused in CR No.94 of 2015 registered with Shahupuri Police Station Satara dated 24.4.2015 for the offences punishable under Sections 452, 354, 323, 504, 506 read with section 34 of the IPC. The said crime is registered on the report made by Smt. Sushila Mahadeo Borate. After the lodgment of the first information report, the respondent no.2 preferred an application for pre-arrest bail being Criminal Misc. Application No.207 of 2015 in the Court of Additional Sessions Judge, Satara at Satara as

contemplated under section 438 of the Code of Criminal Procedure.

3) As per the record, during the course of the arguments in the said Application, the learned Advocate appearing for the respondent No.2, apart from various other submissions, also made a submission, that the present complaint is not drafted by the prosecutrix and the master mind behind the complaint is the brother of the applicant-accused with whom they are on enmical terms. The learned Trial Court after perusing the record produced before it and taking into consideration the submissions advanced by the learned advocate for the respondent no.2, observed that, it find substance in the said contention of the learned Advocate. The learned Trial Court by its Order dated 16.7.2015 was pleased to grant pre-arrest bail to the respondent no.2.

The petitioner is the said “brother” who has been referred to by the respondent no.2 during the course of arguments, as has been reflected in the said order dated 16.7.2015. The petitioner being aggrieved by the underlined observations(reproduced below) made by the Trial Court has preferred the present petition for expunging the same. For the sake of brevity the said observations are reproduced herein below:-

“Advocate Kadam has also drawn my attention to the various documents on record and submitted that the present complaint is not drafted by the prosecutrix

and the master mind behind the complaint is the brother of the applicant-accused with whom they are on enmical terms. The learned Advocate has drawn my attention to various documents and I find substance in the said contention of the learned Advocate". (Underline-Emphasis supplied).

4) Heard the learned Counsel for the respective parties and also perused the entire record made available before me.

5) Mr. Sawant, the learned counsel appearing for the petitioner submitted that, when a Court records finding making castigating remarks against the person, either an opportunity of being heard to the said person be given or if not, the said disparaging remarks be expunged from the proceeding on an application made by the concerned person to that effect. Mr. Sawant further submitted that without giving an opportunity of being heard, the submission made by the learned counsel appearing for the accused person was accepted by the Trial Court, is contrary to the settled principles of law. In support of his contention, he relied on the following two decisions:-

- 1) Om Prakash Chautala Vs. Kanwar Bhan & Ors.
(2014) 5 Supreme Court Cases 417
- 2) Vidya Charan Shukla Vs. State.
2008 Cri. L.J. 1333.

6) Mr. Sawant further contended that according to the petitioner the remarks/ observations made by the learned Additional Sessions Judge against him, while granting pre-arrest bail to the respondent no.2 are highly derogatory, stigmatic and disparaging, which, in his submission are against the reputation of the petitioner, as, they directly attribute a false criminal motive on the part of the petitioner. Mr. Sawant further submitted that as of today, after completion of investigation the police have filed final report under section 173 (2) of Cr. P.C. and the contention raised by the learned Counsel for the respondent no.2 at the time of hearing of his anticipatory bail application has been found to have no basis, as there is no evidence on record to support it. He submitted that there is even no iota of evidence to support the said observation/remark made by the learned Additional Sessions Judge in the said order. Mr. Sawant also submitted that those remarks were not warranted for deciding the anticipatory bail application on its own merits, preferred by the respondent no.2. During the course of the arguments he, however, conceded to the fact that, unless and until a person approaches the Court for expunging such remarks in similar type of matters, as in the present case, while passing the order under section 438 of Cr. P.C., every time opportunity of being heard to such a person need not be afforded. He submitted that his contention is restricted to the facts of the present case only. He, therefore, prayed that the remarks and/or observations made by

the learned Additional Sessions Judge in the aforesaid order may be expunged from the record of the said proceeding.

7) Mr. Nikam, the learned Counsel appearing for the respondent No.2, per contra, vehemently opposed the present application and submitted that the learned Trial Court after taking into consideration the voluminous documents produced by the respondent no.2 which are on record, has come to the said conclusion and therefore has made the said observation, which supports his contention that the petitioner herein was in fact instrumental in prompting the complainant to lodge the said crime. He however fairly conceded to the fact that, after minute perusal of the entire charge-sheet it is revealed that there is no material available on record to support the contention of the learned Advocate for the respondent No.2 who argued the matter before the learned Additional Sessions Judge at the time of grant of pre-arrest bail in the said crime. Mr. Nikam relied upon the judgment of the Supreme Court in the case of **Dr. Dilip Kumar Deka and Anr. Vs. State of Assam and Anr. reported in (1996) 6 S.C.C. 234** and in particular paragraph 6 of the said judgment. He submitted that in view of the guidelines laid down by the Supreme Court in the said judgment, in his submission there is evidence on record having bearing in that context justifying the remarks made by the Trial Court and it was necessary for the decision of the said Application, as an integral part thereof, to opine on that conduct. Mr Nikam however

conceded to the fact that as per the first guideline laid down by the Supreme Court in that case that, the party whose conduct is in question, was before the Court or had an opportunity of explaining or defending himself, was not granted to the petitioner in the present case.

8) It is to be noted that in the case of Omprakash Chautala (supra), the Supreme Court has held that no one would like to have his reputation dented. One would like to perceive it as an honour rather than popularity. When a Court deals with a matter that has something likely to affect a person's reputation, the normative principles of law are to be cautiously and carefully adhered to. The advantage has to be sans emotion and sans populist perception, and absolutely in accordance with the doctrine of audi alteram partem before anything adverse is said. It is further held that when caustic observations are made which are not necessary as an integral part of adjudication and it affects person's reputation, a cherished right under Article 21 of the Constitution is violated.

In the case of Vidya Charan Shukla Vs State (supra) the learned Single Judge of Chhattisgarh High Court has held that the remarks/observations made against the person which are objectionable against the reputation of a person and which affects the rights of the petitioner for which he has full authority of protection and in those circumstances the principles of natural justice would at once come into

play. Therefore the remarks are liable to be expunged from the proceeding.

9) It is further be noted that the Supreme Court in the case of Om Prakash Chautala (supra) has taken into consideration the judgment in the case of Dr. Dilip Kumar Deka (supra) and thereafter has enunciated the principles of law as stated herein above. In the present case, the remark made by the learned Trial Court to the effect that “I find substance in the said contention of the learned Advocate”, in my considered opinion is an unwarranted observation made or finding recorded by it while deciding the pre-arrest bail application of the respondent No.2 and is also not in consonance with the ratio laid down by the Supreme Court in the case of Om Prakash Chautala (supra). There cannot be any doubt about the fact that an advocate appearing in the matter always makes a submission on facts involved in the case and particularly on the basis of the instructions given to him by his client. Therefore, in the present case also when the concerned Advocate made or advanced such argument as quoted herein above, it is undoubtedly presumed and inferred that the said submission was made on the basis of instructions given by his client i.e. the respondent no.2 herein.

10) In view of the ratio laid down by the Supreme Court in the case of Om Prakash Chautala (supra), I am of the view that the learned Trial Court ought not have accepted the said submission made by the

learned Advocate for respondent No.2 as a gospel truth without adverting itself to the record produced before it. In my considered opinion, before accepting the submission made by the concerned Advocate, the learned Trial Court ought to have verified the fact and then recorded a specific finding to that effect. A bare perusal of the order dated 16.7.2015 demonstrates that the learned Trial Court after taking into consideration the evidence produced by the police authorities and/or the respondent No.2 has recorded a finding that it was a fit case for grant of pre-arrest bail to the respondent no.2. In such circumstances, submission made by the counsel for the respondent no.2 ought not have been accepted blindly, thereby proceeding to make caustic remarks against the petitioner herein. In view of the above discussion, I find that the words **“is the brother of the applicant-accused”** and **“I find substance in the said contention of the learned Advocate”** are not at all necessary to remain on record of the present case i.e. in order dated 16.7.2015 in Criminal Misc. Application No.207 of 2015 arising out of CR No.94/2015 registered with Shahupuri Police Station, Satara, District-Satara and the same are hereby expunged from the order dated 16.7.2015 and all other related record.

11) The petition is allowed to the extent indicated above. It is made clear that the rest of the portion of the said order dated 16.7.2015 is not disturbed. It is also made clear that this Court has not adverted to the merits of the Criminal Misc. Application No.207 of 2015 dated

16.7.2015 and any observation made in this order shall have no bearing on the merits of the said order dated 16.7.2015.

12) The petition is allowed in the aforesaid terms.

(A.S. GADKARI, J.)