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

CRIMINAL WRIT PETITION NO.134 OF 2009

1. Prakash Zawru Koli,
Age: 44 years, Occ: Service,
2. Ashok Rajaram Saindane,
Age: 53 years, Occ: Service,

Both R/o. Executive Engineer
Extra High Voltage,
Construction Division,
Ramdas Colony, Jalgaon,
Tal. & Dist. Jalgaon.

..PETITIONERS

VERSUS

1. The State of Maharashtra
2. Smt. Anjali Anil Tare,
Age: 53 years, Occ: Service,
R/o. Plot No.14, Mohan Nagar,
Jalgaon, Tal. & Dist. Jalgaon. ..RESPONDENTS

Mr A.V. Indrale Patil, Advocate h/f Mr S.A.
Pradhan, Advocate for petitioners;
Mr S.W. Munde, Addl. Public Prosecutor for
respondent No.1;
Mr K.C. Sant, Advocate for respondent No.2

CORAM : N.W. SAMBRE, J.

DATE : 4th JANUARY, 2017

ORAL JUDGMENT :

The petitioners and respondent No. 2 are

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public servants working in the then Maharashtra State Electricity Board.

2. The Executive Engineer and competent authority of Extra High Voltage, Construction Division, Jalgaon vide order dated 11th September, 1996 and 25th October, 1996 stopped annuam increment of respondent No. 2 for the period of one year without cumulative effect.

3. On 9th December, 1996 the staff members including that of lady staff gave representation to the Finance Minister alleging that the conduct of respondent No. 2 during office hours is not proper and is quarrelsome nature. Based on the said representation, criminal proceedings being Criminal Case No. 5866 of 2005 came to be initiated by respondent No. 2 in the Court of Judicial Magistrate, First Class, Jalgaon for the offence punishable under Section 500 of the Indian Penal Code (defamation).

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4. Learned Magistrate vide order dated 24th January, 2010 has found that the alleged offence was committed by the accused in the year 1996 when they have issued a letter to the Finance Minister. The complaint is filed in the year 2005.

5. The order of Magistrate of issuance of process came to be questioned by the petitioners in revision being Revision No. 129 of 2008, which came to be dismissed on 3rd June, 2008 with observations that at the stage of issuance of process, the matter has to be viewed merely from the point of view of the complainant. As such, present proceedings questioning the initiation of complaint.

6. Heard learned Counsel for the petitioners, learned Additional Public Prosecutor and Mr. Sant, learned Counsel for respective respondents.

7. Learned Counsel for the petitioners submit that both the petitioners and respondent No.2 are

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public servants and alleged report dated 9th December, 1996 cannot be termed to be defamatory *per-se* punishable under Section 500 of the Indian Penal Code. According to him, communication was never intending to commit offence as alleged but was with an intention to bring to the notice of the higher authorities unhealthy atmosphere prevailing in the office because of the behaviour and conduct of respondent No.2. He would then submit that it is always open for co-employees to prefer representation particularly in the background of what has been narrated in the alleged representation. In addition, a plea is raised that for alleged communication of 1996 complaint case is filed in 2005 which is barred by limitation.

8. Mr. Sant, learned Counsel for respondent No. 2 would urge that this respondent is also a co-employee is not in dispute. According to him, the stoppage of increment of respondent No. 2 with non-cumulative effect if read in the background of representation dated 9th December, 1996 preferred

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by the petitioners, it could easily be inferred that same was with intention to cause defamation. He would then submit that the alleged report was circulated and looked into, read by staff members from Mantralaya and as such, offence is complete. He would then submit that defence of the petitioners-accused cannot be looked into at this stage. The complaint was initiated immediately after the respondent got knowledge about the defamatory article, hence, same is not barred by limitation.

9. Having bestowed my thoughts to the submissions made, it could be noticed from the representation preferred by the petitioners against conduct, behaviour, unhealthy atmosphere created by respondent No. 2 in the office qua working of co-employees, *per-se* cannot be termed as a defamatory particularly when the contents thereof, in my opinion, are only with a view to bring to the notice of the higher authorities about the conduct of respondent No. 2 and unhealthy atmosphere in the

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office. There does not appear to criminal intention or motive on the part of petitioners to cause or commit any offence punishable under Section 500 of the Indian Penal Code.

10. Section 499 of the Indian Penal Code which defines offence of defamation provides for a person who makes or publishes any imputation intending to harm or knowing or having reason to believe that such imputation will harm, the reputation of such person is claimed to have committed offence of defamation. Section then provides for certain exceptions amongst other second exception is, public conduct of public servants, i.e. To say; it is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in discharge of his public functions, or respecting his character, so far as his character appears in that conduct and no further, whereas eighth exception is about accusation preferred in good faith to a person authorized.

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11. So far as the complaint in question is concerned, the same is based on the representation signed by co-employees on the complainant in the office on 9th December, 1996. In the said representation to the Hon'ble Minister, in the beginning itself, it is stated that the complainant is working as an employee along with the signatories to the said representation and issue as regards service of complainant is since in relation to employer and employee relationship, representation is preferred particularly in relation to the conduct of complainant as she had preferred written complaints against the employees. The contents of the said representation narrates behaviour of the complainant during office hours with other employees.

12. The complainant then stated that said representation which was sent to the Hon'ble Minister and senior officers of the M.S.E.B., same has changed the hands qua employees working in the office of Hon'ble Minister and Board and as such,

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the complainant was defamed.

13. In my opinion, eighth exception to Section 499 of the Indian Penal Code in clear terms covers the case of the petitioners. As narrated herein above, the contents of the representation made by the petitioners, who are accused in the complaint for offence punishable under Sections 499 and 500 of the Indian Penal Code has to be termed as accusation preferred in good faith to person authorized. As such, accusation in the form of representation dated 9th December, 1996 was preferred to the Hon'ble Minister and employer Board. Such accusation has to be presumed in good faith and there is a lawful authority to the Minister and employer Board to act on such representation.

14. Apart from above, it is to be noted that the alleged communication is of the year 1996, whereas complaint came to be initiated in 2005. If said event of delayed filing of the complaint is in

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the background of Sections 468 and 469 of the Code of Criminal Procedure, what could be noticed is, maximum punishment is provided for two years for offence of defamation, for which Section 468 of the Code of Criminal Procedure prescribes limitation of three years. The complaint filed by the complainant seeking punishment under Section 500 of the Indian Penal Code for the offence of defamation committed by the petitioners-accused is based on the incident of 1996. Perusal of the complaint does not disclose that at what point of time, the complainant received an information about the knowledge of such complaint preferred by the petitioners, which is defamatory in nature against respondent No.2. In view thereof, *prima facie*, it could be inferred that the limitation for filing of the complaint was three years and the complaint is filed almost after period of nine years, for which, there are hardly any references in the complaint.

15. As a consequences whereof, it has to be inferred that the complaint is barred by limitation

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as provided under Section 468 of the Code of Criminal Procedure.

16. The claim of respondent No. 2 that the complaint was initiated from the date of knowledge, that itself is sufficient to infer that respondent No. 2 got knowledge of the incident in 2005. It means, the representation itself was not circulated amongst public and co-employees so as to cause any defamation to respondent No. 2.

17. In view thereof, in my opinion, case for interference is made out. Criminal Writ Petition is allowed in terms of prayer clause (C).

(N.W. SAMBRE, J.)

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