

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

904 CRIMINAL APPLICATION NO. 1147 OF 2016

ANIL S/O. BABULAL KATIRIYA
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

Shri. Sandip R. Andhale, Advocate, for petitioner.

Shri. K.D. Munde, Additional Public Prosecutor, for
respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 11 JANUARY 2017

ORDER:

1) The proceeding is filed under section 482 of the Code of Criminal Procedure for quashment of the private complaint bearing STC No.377/2009 presently pending before the learned Judicial Magistrate, First Class, Ahmednagar. Heard learned counsel for the petitioner. Some hearing was given to the learned Additional Public Prosecutor.

2) Private complaint is filed by respondent No.2 for offences punishable under sections 500, 504, 506 etc

of the Indian Penal Code. In the past petitioner had filed Criminal Writ Petition No.760/2010 in respect of this complaint but the said petition was withdrawn on 14-2-2013. Before filing that writ petition, criminal revision bearing No. 203 of 2009 was filed in the Court of Session Ahmednagar and it was dismissed on merits. This decision was challenged in the aforesaid writ petition. In view of these circumstances, it cannot be said that present relief for which he has come to this Court was not under consideration in the previous matter.

3) Some hearing was given on the merits of the case. This Court has carefully gone through the NC report prepared by police. It shows that in respect of the incident dated 3-12-2008 the report was given by present respondent No.2 to the police and the report was registered as NC case though it was for offences under sections 504, 506 of the Indian Penal Code. At that time also allegations were made by the complainant that he was called as *goonda* and the person extracting money, *Khandani* by the accused and names of witnesses in whose presence these words were uttered were given before

police. In view of this, it cannot be said that section 500 IPC was subsequently added when private complaint was filed.

4) Present complaint was entertained in the year 2008 and the present proceeding came to be filed on 9-2-2016, after about 8 years. Due to laches also this Court holds that the matter cannot be allowed. Learned counsel for the petitioner placed reliance on some observations made by the Apex Court in the case reported as **AIR 2007 SC 3234 (Dilawar Singh v. State of Delhi)**. He has placed reliance on some observations made by the Apex Court in the case reported as **2016 DGLS (SC) 934 (Prabhu Chawla v. State of Rajasthan)**. Facts and circumstances of each and every criminal case are always different. If relief under section 482 of the Code of Criminal Procedure is given by Court in one case that does not mean that it is available in every other case. Every matter needs to be decided on the facts and circumstances of that case. In view of the facts and circumstances of this case, this Court holds that the observations made by the Apex Court in the aforesaid two cases are of no help to the present

case. The observations can be used only on the point of tenability.

5) One more circumstance was argued by the learned counsel for the petitioner. It was submitted that prior to giving of the report to the police by the complainant and prior to filing private complaint, the petitioner had given complaint application against the complainant to the police station and the superior police officers and only to give counter blast to those proceedings present matter is filed. This contention cannot be considered at this stage. There are other allegations and there is record like NC report prepared by police and there are witnesses available. There were other proceedings also like challenging the order of issue process and then one writ petition was filed in this Court. In view of these circumstances this Court holds that it is not possible to grant relief of quashing of the proceeding itself. The application stands dismissed. The observations made are only for the purpose of present proceeding.

Sd/-
(T.V. NALAWADE, J.)

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