IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No.1189 of 2016

* Farha-naz Shaikh Tanveer,
Age 23 years, Occupation : Household,
R/o. Muslim Nagar, Plot No.21,
Near National High School,
Dhule, Taluka & District Dhule. **.. Petitioner.**

Versus

1) Tanveer Ahmad Shaikh Alamgir,
Age 27 years,
Occupation: Service,
R/o. Parkot Mohalla, Nashirabad
Taluka and District Jalgaon.

2) The State of Maharashtra. **.. Respondents.**

Shri. Maheshkumar S. Sonawane, Advocate, for petitioner.

Shri. G.A. Nagori, Additional Public Prosecutor, for respondent No.1.

Shri. S.J. Salgare, Additional Public Prosecutor, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 19 JANUARY 2017

JUDGMENT:

1) Rule, rule made returnable forthwith. Heard both the sides by consent for final disposal.

2) The petition is filed for challenging the order of issue process made by the learned Judicial Magistrate First Class Jalgaon in S.C.C. No.1440/2013 and to challenge the decision of Criminal Revision Application No.31/2016 which was filed to challenge the order of issue process and also for quashing of the proceeding of S.C.C. No.1440/2013 itself.

3) Summary Criminal Case No.1440/2013 is filed as a private complaint by present respondent No.1 Tanvir against present petitioner for offences punishable under sections 504, 506 of the Indian Penal Code. In the past provisions of sections 188 and 323 of the Indian Penal Code were also shown in the complaint. Allegations are made that in the past present petitioner had given report for registering a crime against the complainant and his 10 relatives for offences punishable under section 498-A of the Indian Penal Code in Azadnagar Police Station Dhule and she had opposed the application filed for bail to see that the complainant and his relatives are sent to jail. It is the case of the complainant that the High Court granted bail to him and to his relatives.

4) It is the case of the complainant that when he and his relatives got bail complainant gave abuses to him and to his father and gave threats that she would see that he is removed from service. Allegations are made that she had given threats to file false cases. Some allegations were made with regard to the application given by the present petitioner to the Chief Executive Officer Zilla Parishad Jalgaon on 3-12-2012 in respect of his alleged misconduct. This and other similar allegations need not be considered in the present matter as the order of issue process is made only in respect of offences punishable under sections 504 and 506 of the Indian Penal Code.

5) The complaint in respect of one incident and the submissions show that in the complaint date of incident was not mentioned and even place of incident was not mentioned. It is vaguely contended that when bail was granted to the complainant and his relatives the incident took place. In the complaint even list of witnesses was not given. The verification of the complainant, present respondent came to be recorded on 5-8-2013. After that the learned Judicial Magistrate First Class made

order of investigation by police under section 202 of the Code of Criminal Procedure on 26-8-2013. Police made investigation and submitted report that no incident at all had taken place for offences punishable under sections 504, 506 of the Indian Penal Code. This report was submitted on 11-6-2014. The order of issue process came to be made on 4-7-2014.

6) The order of issue process does not show that police report given under section 202 of the Code of Criminal Procedure was considered by the Magistrate. When the material like verification recorded under section 200 of the Code of Criminal Procedure was not felt sufficient, need was felt to postpone the issue of process and collect material from police, it was not proper on the part of the Magistrate to ignore the police report and issue process.

7) It is already observed that in the complaint even the date and place of the incident are not mentioned. Vague allegations are made that present petitioner gave abuses to the complainant and to his father. This

circumstance is ignored by the learned Judicial Magistrate. Already offence was registered at the instance of the wife for offence punishable under section 498-A of the Indian Penal Code against the husband of the present petitioner. The petitioner is resident of Dhule when the complainant is resident of Jalgaon and the complaint is filed in Jalgaon. These circumstances are also not considered as it was necessary to mention the place of incident in the complaint. It can be said that only to harass the wife, the complainant has filed the private complaint against her. This Court holds that it will be abuse of process of law if the complainant is allowed to prosecute the matter further.

8) The petition is allowed. The order of issue process passed against the petitioner for offences punishable under sections 504, 506 of the Indian Penal Code is hereby set aside. The proceeding itself is hereby quashed and set aside. Rule is made absolute in above terms.

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

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