

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1570 OF 2002**

BRIG. Amrish Prasad
Ex. President,
Cantonment Board, Deolali,
presently working in Jammu Kashmir
as Brigadier. Petitioner

Vs.

1 The State of Maharashtra

2 Mr. Ramesh M. Sharma
R/o : Aasra, Rest Camp Road,
Deolali Respondents

Ms. Neeta Masurkar, Advocate for the Petitioner.
Ms. Pallavi Dabholkar, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.

Date : 16th February, 2017

JUDGMENT :

1 This petition filed under Section 482 Code of Criminal Procedure ("Cr.P.C.") seeks quashing of the private Complaint No.2024 of 2001 filed by respondent no.2 for the offence punishable under Section 500, Indian Penal Code ("I.P.C.") pending in the Court of Judicial Magistrate First Class, Nashik Road, Nasik. By the order dtd. 21st August, 2001,

the trial Court has issued process under Section 500 I.P.C. against the petitioner.

2 At the relevant time, i.e. in the year 2001, the petitioner was posted as President, Cantonment Board, Deolali. The Cantonment Board consists of 7 elected members and 7 nominated members. It is presided over by the President of Board, who happens to be a Station Commander of the Army at the Station. Respondent no.2 was one of the elected persons. He alongwith another elected person, one Mr. Vilas Pawar by the letter dtd. 21st June, 2001 complained to the petitioner of illegal construction, F.S.I. violations and encroachment on the Cantonment space by builder, Basant N. Gurnani at his old residence-cum-shop on Vadner Road in civil area of Cantonment Board Deolali and requested the petitioner to take suitable action of stopping the work of construction and removal of encroachment. The letter also alleged that open violation of F.S.I. and Cantonment Act cannot take place without connivance of the Cantonment officials. By the intimation dtd. 21st May, 2001, both the complainants were called for the hearing before the petitioner. Soon thereafter, the petitioner received letter dtd. 30th May, 2001 from Basant Gurnani and his brothers complaining against respondent no.2 of demand of illegal gratification from persons carrying out construction work in the Cantonment area. The letter further alleged that because the demand for gratification was not met,

respondent no.2 had started writing letters to the Board Office as well as the members of public at large, abusing their family in general. The letter further pointed out that respondent no.2 himself had violated F.S.I. rules at his own bungalow, which he has admittedly in writing to the Board. But no action has been taken by the board against him. The petitioner then by his letter dtd. 7th July, 2001 forwarded the complaint of Basant Gurnani to respondent no.2 and Mr. Vilas Pawar for their comments. Then on 14th August, 2001, respondent no.2 filed the complaint herein alleging that forwarding of copy of the letter received from Gurnani Brothers to Mr. Vilas Pawar also alongwith respondent no.2 amounts to defamation within the meaning of Section 499 I.P.C. According to respondent no.2 this act on the part of the petitioner was intentional with sole motive to cause damage to his reputation.

3 Ms. Masurkar, the learned advocate for the Petitioner submits first that in view of Section 36 of the Cantonment Act, every member of the Board is a public servant within the meaning of Indian Penal Code. As such the petitioner is entitled for protection under Section 197(1) Cr.P.C. of prior sanction to prosecute. Since respondent no.2 has not taken prior sanction, the complaint filed by him is liable to be dismissed. Her second submission is that the criminal proceedings initiated against the petitioner are with oblique motive and amount to abuse of process of court, because the

same has been filed with intent to settle score with Gurnani Brothers in respect of the civil disputes that respondent no.2 has with them. The third arguments is that since the complaint dtd. 21st June, 2001 of illegal construction on the part of Gurnani Brothers was a joint complaint of respondent no.2 and Mr. Vilas Pawar forwarding of the letter of Gurnani Brothers to Mr. Vilas Pawar cannot be said to be publication of imputations. Besides, there is no allegation of the petitioner being the author of the imputations. Lastly, Ms. Masurkar submits that after filing of the complaint, respondent no.2 has in fact tendered apology to the petitioner.

4 There can be no dispute that the petitioner would be a public servant in his then capacity as the President of the Cantonment Board. His act of forwarding copy of the letter of Gurnani Brothers to respondent no.2 and Mr. Vilas Pawar for their comments thereon was patently in the course of his duty as such. Therefore, he is entitled to protection under Section 197(1) Cr.PC. and cannot be prosecuted without prior sanction under Section 197(3) Cr.P.C. The petitioner is not even alleged to be the author of the imputations. The only allegation against the petitioner that he has published the imputations made by Gurnani Brothers. However, in the facts and circumstances of the case, the act of the petitioner cannot be said to be publication of imputations against respondent no.2. All that the petitioner had done was to forward to respondent no.2 and Mr.

Vilas Pawar the response of Gurnani Brothers to the complaint made by them. This was obviously part of the hearing of the complaint. All these aspects have been lost sight off by the Trial Court. Therefore the petition is allowed in terms of prayer clause (b).

(Smt. R.P. SondurBaldota, J.)