

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

CRIMINAL WRIT PETITION NO.182 OF 2018

Bhartiya Janta Party,
Through -
Ashok s/o. Sitaram Ladvanjari,
Age : 44 years, Occ. Business,
r/o. Ram Mandir, Chauk,
Near Ram Mandir, Mehrun,
Tq. and Dist. Jalgaon ..Petitioner

Vs.

The State of Maharashtra ..Respondent

Mr.Swapnil S. Patil, Advocate for petitioner

Mr.S.D.Ghayal, APP for respondent

CORAM : SANGITRAO S. PATIL, J.

DATE : JUNE 22, 2018

ORAL JUDGMENT :

Heard the learned Counsel for the petitioner
and the learned APP for the respondent.

2. Rule, returnable forthwith. With consent of
the learned Counsel for the parties, taken up for final
hearing.

3. The petitioner has taken exception to the order dated 17.01.2018 passed in Criminal Revision Application No.52 of 2018 by the learned Additional Sessions Judge, Jalgaon, whereby the petitioner was directed to add the proposed accused as a party to the said Criminal Revision Application.

4. The petitioner filed Summary Criminal Case No.5060 of 2015 before the learned Judicial Magistrate First Class, Jalgaon, for the offence under Section 499 punishable under Section 500 of the Indian Penal Code against the proposed accused viz:- Gulabrao Raghunath Patil, on the allegation that on 06.12.2015, he made a defamatory statement against the petitioner and one of its leaders. At the relevant time, the proposed accused – Gulabrao Patil was a sitting Member of the Legislative Assembly (M.L.A.). When the complaint was placed before the learned Chief Judicial Magistrate, Jalgaon, on 17.12.2015, since the proposed accused was a sitting M.L.A., he directed to register the case and assigned

it to some other Court keeping open the question of sanction for prosecution under Section 197 of the Code of Criminal Procedure ("the Code", for short).

5. The complaint was then placed before the learned Judicial Magistrate, First Class (6th Court), Jalgaon on 18.11.2017. On 18.11.2017, the learned Magistrate observed that at that time, the proposed accused had become a Minister of State. Therefore, the learned Magistrate opined that the complaint should be presented before the Sessions Court in view of sub-section (2) of Section 199 of the Code and therefore, returned it to the complainant for being presented before the proper Court. This order was challenged by the petitioner by filing the above-mentioned Criminal Revision Application. The Registry of the Sessions Court raised an objection that the proposed accused was a necessary party to the Revision Application. The learned Additional Sessions Judge upheld that objection with the observations that the proposed accused has a right of

hearing before the revisional Court and he should be made party to the Revision Application. This order has been challenged in this Writ Petition.

6. The learned Counsel for the petitioner submits that when the offence of defamation is alleged to have been committed against a person, who, at the time of such commission, is a Minister, then only the Court of Session is empowered to take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor vide sub-section (2) of Section 199 of the Code. He submits that in this case the proposed accused was not the Minister of State at the time of commission of the alleged offence of defamation. Therefore, there was no scope to attract the provisions of sub-section (2) of Section 199 of the Code. He then submits that when the complaint was not dismissed by the learned Magistrate or any other Court and when no right had accrued in favour

of the proposed accused, there was no question of giving him an opportunity of hearing in the Criminal Revision. He submits that in this case, the dispute was only about the forum where the complaint for the offence of defamation was required to be filed, i.e. either before the learned Judicial Magistrate, First Class or the learned Sessions Judge. According to him, for this purpose, it was not at all necessary to implead the proposed accused as a party in the Criminal Revision Application. He, therefore, prays that the impugned order may be set aside and the learned Sessions Judge may be directed to proceed with the Criminal Revision Application without impleading the proposed accused.

7. The learned APP fairly concedes that in the facts and circumstances of the case, it is not necessary to implead the proposed accused to the Criminal Revision Application. No prejudice would be caused to the proposed accused, if the complaint is

allowed to be placed before either the Court of the Judicial Magistrate, First Class or the Sessions Court.

8. In the present case, the dispute is about the forum before which the complaint shall lie. The petitioner filed complaint before the learned Judicial Magistrate, First Class. However, the learned Judicial Magistrate, First Class opined that it should be filed before the Sessions Court. The question of applicability of the provisions of sub-section (2) of Section 199 of the Code will have to be considered by the revisional Court. In case the revisional Court finds that sub-section (2) of Section 199 of the Code is not applicable to the facts of the present case, the complaint would lie before the learned Judicial Magistrate First Class. If the learned revisional Court finds that the provisions of sub-section (2) of Section 199 of the Code are applicable to the facts of the case, the complaint would lie before the Sessions Court. The

case is at pre-cognizance stage. The proposed accused has no right of hearing at that stage. However, if the complaint is dismissed under Section 203 of the Code and the order dismissing the complaint is challenged by filing Revision Application, the proposed accused gets a right of hearing since because of dismissal of complaint, a right is created in his favour to save himself from the ordeal of a criminal trial. The order passed by the learned Magistrate directing the applicant to file the complaint before the Sessions Court does not vest any right in the proposed accused. The case is still at the pre-cognizance stage. No prejudice is going to be caused to the proposed accused by the order of the revisional Court fixing the forum for filing of the complaint. In the circumstances, the proposed accused cannot be said to have any right of hearing in the Revision Application.

9. The learned Additional Sessions Judge wrongly directed the applicant to add the proposed accused as a party to the Criminal Revision. The impugned order being not legal, proper and correct, will have to be quashed and set aside and the learned Additional Sessions Judge will have to be directed to entertain the Criminal Revision Application without impleading the proposed accused.

10. In the result, I pass the following order.

- (i) Criminal Writ Petition is allowed.
- (ii) The impugned dated 17.01.2018 passed in Criminal Revision Application No.52 of 2018 by the learned Additional Sessions Judge, Jalgaon, is quashed and set aside.
- (iii) The learned Additional Sessions Judge is directed to entertain the Criminal Revision Application without impleading the proposed accused as a party thereto.

- (iv) Rule is made absolute in the above terms.
- (v) The Writ Petition is accordingly disposed of.

[**SANGITRAO S. PATIL, J.**]

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