

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION No. 495 OF 2017

Dr.(Ms.) Kumudini Mayur

....Petitioner

Vs.

Mr. Lalit Visanji Mota and Ors.

....Respondents

Mr. Sandeep A. Velkar for Petitioner

Mr. Sagar Bhandare for Respondent No.1

Mrs. S.S. Kaushik -APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 12, 2018

P.C.

1. Complaint case for an offence punishable under section 500 r/w.114 & 34 of IPC in CC No. 60/SS/2014 came to be initiated against the present Petitioner, in which the Learned Magistrate passed the impugned order dated September 1, 2015 ordered issuance of process.

2. The defamatory article deals contains imputations about of the sister of the Complainant viz. Meena, who was married to Dr. Rashmi Mayur. In the

alleged defamatory article, which was published in the newspaper, it was mentioned that there was no marriage between Meena and Dr. Rashmi Mayur.

3. This order of issuance of process was questioned before the Revisional Court by the Petitioner, who is one of the accused being Misc. Application No. 1471 of 2016 which came to be rejected by the impugned order by December 28, 2016, as such this petition.

4. The learned counsel for the Petitioner-accused would urge that every endeavor is being made to settle the dispute between the parties as there was no intention to defame the Complainant. He would then urge that the proceedings in complaint with order thereon was challenged in writ petition which was dismissed being time barred and the delay in the revision which was caused because of pendency of writ petition before this Court being Writ Petition No. 128 of 2016 is bonafide. He submits that the petition was permitted to be withdrawn / disposed of with liberty to file revision and, as such, the time consumed in the High Court should have been considered by the Sessions Judge while deal with the prayer for condonation of delay in revision.

5. It is not in dispute that there is delay of 200 days in preferring a revision.

6. The Learned Revisional Court in paragraph 8, has observed that Writ Petition No. 128 of 2016 preferred by the Petitioner was questioning the order of issuance of process passed by the Learned Magistrate. The said writ petition came to be withdrawn on April 26, 2016. While withdrawing such writ petition, no liberty was granted by this Court, permitting the Petitioner to prefer a revision before the Sessions Court. This was perhaps having regard to the fact that the writ petition was heard on merit and upon instructions from the Petitioner, the same was permitted to be withdrawn.

7. Once the writ petition was withdrawn without any liberty to pursue the remedy of revision, the Revisional Court, in my opinion, was right in holding that the revision in such eventuality, is not maintainable in law. In the matter of **Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P. Gwalior and Ors. [AIR 1987 S.C. 88]**, the law on the above issue is well settled. The Apex Court in the said matter, has observed that once a remedy provided by the statute for a cause is exhausted by electing to such remedy and the said proceedings are withdrawn/ disposed of without any liberty to pursue any other remedy, the second proceeding for the same cause of action in

absence of any liberty is not maintainable.

8. In the present case, through remedy of revision was available to Applicant, the Petitioner has chosen to file writ petition against the order of the Magistrate ordering issuance of process and having become unsuccessful in the said writ petition, for the same cause has approached the Revisional Court, which in any case is not permissible in law. The petition, as such, is devoid of merits and it is dismissed.

[NITIN W. SAMBRE, J.]