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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1866 OF 2016

Pijush Chattopadhyay

..Petitioner.

V/s.

Sanjeeb Patjoshi & Ors.

..Respondents.

Mr.R.N.Sanghvi for the petitioner.

Mr.S.M.Kamaluddin with Ms.Rashida Kamaluddin for respondent No.1.

Mr.S.R.Shinde, APP for the respondent-State.

CORAM: NITIN W.SAMBRE, J.

DATE : MARCH 6, 2018

PC.:-

Heard the respective parties.

2. In the Court of Judicial Magistrate First Class, Court No.9, Pune the petitioner filed S.C.C. No.16980/2015 alleging commission of offences punishable under section 499 and 500 of the Indian Penal Code against the respondents.

3. The learned Magistrate ordered process, which was questioned by the respondents in Criminal Revision Application

No.465 of 2015 before the learned Sessions Judge, Pune. The learned Sessions Judge allowed the revision by the impugned order dated April 19, 2016. As such, this revision by the original complainant.

4. The learned counsel for the applicant / original complainant makes the following submissions :-

a) The verification in support of the complaint in the backdrop of the provisions under section 200 of the Code of Criminal Procedure was recorded by the Magistrate and he invited attention of this Court to the endorsement by the Magistrate as 'R & R' and the signature. He would urge that the said fact is not in dispute rather an admitted fact;

(b) The next submission of the learned counsel for the petitioner is that section 204 of the Code of Criminal Procedure warrants submission of list of witnesses. According to him, the compliance of the same is mandatory for proving an offence under sections 499 and 500 and he undertakes to furnish such list of witnesses within a period of four weeks from today before the Magistrate;

(c) The next submission of the learned counsel for the petition is that sanction as contemplated under section 197 of the Code of Criminal Procedure for the offences punishable under section 499 and 500 of the Indian Penal Code can be gone into at the time of issuance of process, as cognizance is not taken by the Magistrate, which is required to be appreciated;

5. According to him, for the aforesaid reasons, the order of the revisional Court is liable to be quashed and set aside, with directions to decide aforesaid issues afresh.

6. *Per contra*, the learned counsel for respondent No.1 / original accused would urge that the verification which is recorded does not in clear terms speak of the Magistrate following the aforesaid procedure prescribed under section 200 of the Code of Criminal Procedure. According to him, the examination of the complainant by the Magistrate would disclose that the complainant was administered oath and the said verification was recorded before the said Magistrate. His next submission is that the provisions of section 204 *qua* furnishing of list of witnesses is

mandatory. He would then urge that in a complaint case, the allegations levelled which constitute an offence punishable under section 500 have occurred in discharge of an official duty. The revisional Court was right in taking a view that the complaint suffers from legal defect as per the provisions of section 197 of the Code of Criminal Procedure i.e. want of sanction for prosecution. He submits that the present petition of the complainant is liable to be dismissed.

7. Considered rival submissions. It is not in dispute that the verification dated August 3, 2015 is part of the record of the Magistrate and in the margin of the said verification, the Magistrate made an endorsement 'R & R' on August 3, 2015. The said verification is also signed by the complainant.

8. There is a presumption in law that such verification being part of the record of the Magistrate which bears the signature of the Magistrate was validly recorded. That the complainant in sufficient compliance with the requirement of section 200 of the Code of Criminal Procedure appeared before the Magistrate who validly recorded the verification which cannot be

faulted in law.

9. Apart from above, the defect of non submission of list of witnesses in an complaint for offence of defamation, at the stage of consideration of a prayer for issuance of process, can be deemed to be curable defect as the same won't amount to taking cognizance.

10. Apart from above, whether the offence alleged of defamation at the stage of issuance of process warrants sanction under section 197 of the Code of Criminal Procedure is an issue which, in my opinion, needs reconsideration as the learned revisional Court has failed to consider the said provisions when the Magistrate has not taken cognizance.

11. In the wake of above, the order impugned passed in Criminal Revision Application No.465/2016 dated April 19, 2016 is hereby quashed and set aside. The revision stands restored on the file of the learned Sessions Judge, Pune who shall decide the revision afresh in the backdrop of the observations made hereinabove.

12. The petition stands disposed of in the above terms.

(NITIN W.SAMBRE, J.)