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

CRIMINAL REVISION APPLICATION NO.320 OF 2017

Dnyanesh Murlidhar Devade,
Age 53 years, Occu. Service,
Asstt. Commissioner of Police,
Police Head Quarter, Katol Road,
Police Line Takli, Nagpur City-440013

..Applicant.

V/s.

1. Ravi Rajan Pandayan,
Age; 37 yrs., Residing at A-3/602
RNA CHS Ltd., Vashi Naka,
Chembur (E), Mumbai-400 074.

2. State of Maharashtra

..Respondents.

Mr.Vishal Gupta for the applicant.

Mr.Deepak R.Kushwaha for the respondent No.1.

CORAM : ***NITIN W.SAMBRE, J.***

RESERVED ON : ***MARCH 16, 2018***

PRONOUNCED ON : ***MAY 2, 2018***

ORDER

Heard respective parties.

2. This revision is by the original-complainant in C.C. No.1956/SS/2018 which was preferred against the respondent No. 1 herein in the Court of the Metropolitan Magistrate, 18th Court, Girgaon, Mumbai for an offence punishable under section 500 (2) of the Indian Penal Code.

3. Respondent No.1 herein suffered an order under the Maharashtra Rent Control Act, 1999 ('the Rent Act' for short) at the behest of Sunderlal Nirban and Anitadevi Nirban.

4. The respondent-accused, since failed to deliver possession of the suit property in the said proceedings, approached the Competent Authority under the said Rent Act for permitting police protection for the eviction of the respondent-accused. The senior Police Inspector on January 12, 2015 provided police protection in his official capacity.

5. Against the present respondent-accused crime No.13/2015 was registered as he along with members of the 'Rashtriya Bhim Sena' obstructed and assaulted the competent authority and police officials.

6. It is in this background that respondent No.1-accused preferred a complaint before the Deputy Commissioner of Police making serious imputations against the applicant, referring to certain act arising out of the discharge of his official duties. In the said complaint, it is alleged by respondent No.1-accused that the

applicant, a public servant by misusing his position has involved the persons in false crimes, indulged in corruption, etc.

7. Since the said application made to the Deputy Commissioner of Police has resulted into certain action, the applicant alleging defamation preferred a complaint.

8. The learned Magistrate vide his order dated December 2, 2015 was pleased to order registration as a summons case and ordered issuance of summons to the respondent-accused for offence punishable under section 500(2) of the Indian Penal Code.

9. Feeling aggrieved, respondent No.1-accused preferred a revision being Criminal Revision Application No.99/2017 before the learned Sessions Judge, Greater Mumbai which came to be allowed by the impugned order dated April 20, 2017. As such, this revision by the respondent–original complainant.

10. The learned counsel for the applicant–original complainant invited the attention of this Court to various orders passed by the Apex Court and this Court and submits that the applicant was required to discharge his official duty of providing

police protection in aid of implementation of above Courts' orders. He would then invite the attention of this Court to the various complaints preferred by respondent No.1-accused to senior officers of the complainant, contents of which according to the applicant are defamatory in nature and casting imputations against him. According to him, the contents of the said complaint whereby false allegations are made, that the applicant is a corrupt officer, issuing threats to the persons, of making them involved in false crimes, etc. amounts on offence of defamation. According to him, pursuant to the provisions of section 119 of the Code of Criminal Procedure and sections 499 and 500 of the Indian Penal Code, the Magistrate had passed appropriate order of issuance of summons against the accused for offence of defamation.

11. According to him, the revisional Court, in absence of any error of jurisdiction, has discharged the accused by referring to section 52 of the Indian Penal Code. He submits that the impugned order passed by the revisional Court is not sustainable and is liable to be set aside.

12. *Per contra*, the learned counsel for respondent No.1-

accused would urge that the order of the revisional Court is well reasoned. According to him, in the facts of the case in hand, a complaint was preferred to the Deputy Commissioner of Police and allegations, that the complaint has passed through various hands who were working under the Deputy Commissioner of Police, cannot be gone into at this stage to infer offence of defamation. In addition, learned counsel would urge that the case of respondent No.1 would fall under Explanation 8 to section 499 of the Indian Penal Code. According to him, no jurisdictional error can be noticed in the order impugned and as such, the present revision is liable to be dismissed.

13. Considered rival submissions.

14. The fact that the applicant at the relevant time was working as a senior Inspector of the police station is not in dispute, so also the fact that in compliance with the order of the Courts and competent authority, police protection was provided for execution of the order of eviction / possession to the decree - premises owner.

15. It is also not in dispute that the respondent-accused has

resisted the official act, caused interference, resulting into registration of a crime against him vide Crime No.13/2016 in which respondent No.1 is charge-sheeted.

16. In the aforesaid background, if the application preferred by the applicant-complainant is perused, respondent No.1-accused has made wild, baseless, unfounded allegations in the form of imputations against the present applicant, a public servant by alleging that he is corrupt officer, etc. to his senior officers.

17. It is in this background, the learned Magistrate after application of his mind recorded sufficient reasons to proceed under section 204 of the Code of Crimninal Procedure against respondent No.1-accused for an offence punishable under section 500(2) of the Code of Criminal Procedure. The learned Magistrate has considered that the defamatory allegations are made against the applicant in the complaint preferred by respondent No.1-accused to the Deputy Commissioner of Police.

18. So far as the order impugned passed in the revision is

concerned, the learned Sessions Judge, taking recourse to Explanation 8 of section 499 read with section 52 of the Indian Penal Code has reached to a conclusion that the imputations made against the applicant by respondent No.1-accused are in good faith. The revisional Court observed that it is for the complainant to make averments and show that the action taken by respondent No.1-accused was without due care and caution.

19. So far as the aforesaid observations by the learned revisional Court are concerned, if this Court appreciates the reasons in the impugned order, it is worth to note here that the complaint preferred by the present respondent No.1-accused speaks voluminous about the malafide, allegations / imputations by respondent No.1-accused in the complaint.

20. Perusal of the complaint preferred against the applicant to the office of the Deputy Commissioner of Police in clear terms speaks of use of defamatory language and unsubstantiated allegation against the present applicant. In the backdrop of the fact that the applicant was performing his official duty, while acting in aid of implementing eviction order, respondent No.1-accused

created illegal obstructions tried to assault the public official who were discharging their official duty resulting in registration of crime against respondent. It appears that so as to overcome the said criminal liability, the respondent accused has moved complaint against the applicant containing defamatory statements.

21. In such an eventuality, the observations of the revisional Court that it is for the present applicant to first establish through the averments and demonstrate that the action of respondent No.1-accused was malafide and intentional and without due care and caution is wholly unjustified and not sustainable. Perusal of the complaint, particularly paragraph 3(x) and other pleadings in the complaint speaks voluminous about the reckless and defamatory act on the part of respondent No.1-accused which was correctly appreciated by the Court of Magistrate. Rather it is difficult to accept the reasons and justification given by the revision Court while quashing the order of Magistrate issuing summons to the accused as same goes contrary to the scheme of section 199 of the Code of Criminal Procedure and sections 499 and 500 of the Indian Penal Code.

22. It is worth to record here that the learned revisional Court has failed to understand the scheme of the aforesaid provisions and as such exceeded its jurisdiction.

23. In the aforesaid background, it is really difficult to accept the observations made by the learned Sessions Judge that respondent No.1 is entitled for the benefit of Explanation 8 to Section 499 read with section 52 of the Indian Penal Code.

23. At this stage, upon perusal of complainant and other documents, it is required to be noted that necessary ingredients for an offence of defamation are made out. The article on which the said complaint is based satisfies the requirement of proceedings against respondent No.2 for an offence punishable under section 500(2) of the Indian Penal Code.

25. In the aforesaid background, the order passed by the learned Additional Sessions Judge, Greater Mumbai on April 28, 2017 thereby setting aside the order of issuance of summons to respondent No.1-accused passed by the learned Metropolitan Magistrate, is not sustainable and as such is quashed and set aside. As a consequence, the order of the Magistrate of issuance of

summons for an offence punishable for defamation stands restored.

26. The revision, as such, stands allowed in the above terms.

(NITIN W.SAMBRE, J.)