

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 324/2018

Shri Sudhakar S/o Baliram Chindhalore

..VS..

Umrao Motiramji Zanzad & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.S. Khubalkar, Advocate for the applicant
Shri T.A. Mirza, APP for the non-applicant no. 3

CORAM : Z.A.HAQ, J.

DATED : 05/12/2018

Heard.

By this application under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India, the applicant – accused has challenged the order passed by the learned Magistrate directing issuance of process under Section 166, Section 167 and Section 34 of the Indian Penal Code against the applicant – accused. The applicant has also challenged the judgment passed by the learned Sessions Judge by which the revision application filed by the applicant is dismissed.

The learned Magistrate has undertaken the necessary exercise and after considering the material on record directed issuance of process against the applicant – accused. The learned Sessions Judge has also independently examined the material on record and has recorded his conclusions in para no. 8 of the impugned judgment. The learned Sessions Judge has then discussed the legal position

in para no. 9 of the impugned judgment.

I find that the conclusions of the learned Sessions Judge are based on proper appreciation of the material on record and in consonance with the legal position.

One of the submission made on behalf of the applicant – accused is that the prosecution cannot be lodged against him without prior sanction from the State Government as required by Section 197 of the Code of Criminal Procedure. As per Section 197 of the Code of Criminal Procedure, sanction of the Government is required for the prosecution of a person (public servant) if the person/public servant cannot be removed from his office unless the Government grants sanction for such removal. The applicant has not been able to point out that he cannot be removed from service without prior sanction of the State Government and therefore it cannot be said that the learned Magistrate has committed any error by directing issuance of process against the applicant – accused without there being any prior sanction as per Section 197 of the Code of Criminal Procedure. If the applicant – accused can be removed from service without requirement of prior sanction of the State Government then prior sanction as per Section 197 of the Code of Criminal Procedure will not be required to prosecute him.

In view of the above, I find that the learned Magistrate and the learned Sessions Judge have not committed any error which necessitates interference by this Court in the extra-ordinary jurisdiction with the impugned order and judgment.

The criminal application is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

Ansari