

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPLICATION NO. 1356 OF 2018**

1. Bharat S/o Vithoba Tupe,.
Age : 57 Years, Occ. Retired
2. Anjali W/o Devidas Suse @
Anjali d/o Bharat Tupe,
Age : 34 Years, Occ. Education

Both R/o. Amrapur, Mali Vasti,
Tq. Shevgaon Diust. Ahmednagar
Presently R/o. Rajhans, Kinara colony,
Rahatni, Pune – 17.

.. APPLICANTS

VERSUS

1. The State of Maharashtra.
2. Mahesh Machindra Suse,
Age : 30 Years, Occ. Advocate,
R/o. Dwarkadish Colony,
Bhingar, Ahmednagar.

.. RESPONDENTS

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Advocate for the Applicants : Mr. G. B. Kadlag
A.PP for respondent-State : Mr. M.M. Nerlikar
Advocate for respondent No.2 : Mr. R.S. Kasar

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CORAM :T.V. NALWADE J.
DATE : 29rd JULY, 2019.

JUDGMENT(PER T.V. NALWADE, J] :-

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. The proceeding is filed for relief of quashing and setting-aside the proceeding of Criminal Case No. 6342 of 2017 presently pending in the Court learned Chief Judicial Magistrate, Ahmednagar and which is filed

for the offence punishable under Sections 499, 500 read with Section 34 of the Indian Penal Code by respondent No.2 who is a practicing Advocate. In the private complaint respondent No.2 has made allegations that in the proceeding like R.C.C. No. 698 of 2013 pending in the Court of learned Judicial Magistrate, First Class, Ahmednagar application was moved by the present applicant, that the Advocate who is practicing in the same Court was somehow getting adjournments prior to 12.00 noon of every date fixed by the Court and due to that no progress was made in the matter.

3. Such application was given at Exh. 31 on 02.01.2016 by the complainant of the said matter (matter filed for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code). It can be said that the allegations were only in respect of proceeding No. 219 of 2014 and it is not in respect of other matters. Allegations were made that it was probably taking help of Court staff for taking such dates.

4. Copy of application, in which the allegations were made is produced on record and it shows that the allegations were only in respect of R.C.C. No. 219 of 2014. The case was filed by the State for the offence punishable under Section 498-A of the Indian penal Code.

5. After receipt of the application, the learned Judicial Magistrate First Class made order and advised to file application for transfer if there was grievance of such nature from the first informant. The application was given by father of the lady who was the first informant.

6. Due to allegations of aforesaid nature made in the application given in the case the Advocate has filed private complaint for the offence of defamation. He has made both the first informant and her father accused and the process is issued against them.

7. The learned counsel for the first informant, the present applicant drew the attention of this court to Roznama of the case. Learned counsel for the applicant took this Court through Roznama of R.C.C. No. 219 of 2014. He showed to the Court that there is some over writing on the dates given. He submitted that on 05.12.2015 the next date given was something else but subsequently it was changed to make it 02.01.2016 and similarly on 25.01.2016, when the next date given was different the date was changed to make it 15.02.2019 and due to this circumstance, suspicion was created in the mind of the father of the first informant. He submitted that if there is some grievance and such step is taken by the person, that step is covered by exception No. 8 to Section 499 of the Indian Penal Code. The said exception No.8 runs as under :-

"Eight Exception.-It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation."

8. He submitted that whenever there is some grievance about the working of the Court and there is grievance of aforesaid nature there is no other option to party aggrieved than to bring such thing notice to the presiding officer. He submitted that the presiding officer is authority which can hear such grievance and take decision on it. The order made by the learned Judicial Magistrate First Class of aforesaid nature that it was open to the informant to take step to transfer of the case shows that the learned Magistrate refused to decide the dispute. As the grievance was raised to proper authority, this Court holds that the matter is covered by exception No.8. It also needs to be kept in mind that whenever Advocate is relative of a party, the other party always feels that the advocate can do few things though that thinking may not be correct. Further, in the case filed under Section 498-A of the Indian Penal Code this Advocate is accused. This circumstance cannot be ignored by the Court.

9. In view of these circumstances, this Court holds that the allegations were not of serious nature and there were some circumstances for making such allegations and as the matter is covered

by exception No. 8 to Section 499 of the Indian Penal Code, it will not be proper to ask the present applicants to face the trial for the offence of defamation. In the result, following order :-

ORDER

1. Application is allowed.
2. Relief is granted in terms of prayer clause 'B'.
3. Rule made absolute in those terms.

**[T.V. NALAWADE]
JUDGE**

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