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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 163 OF 2018**

Pradeep Manohar Thakur

.... Applicant

V/s

Anagha (Kunda) Ghanashyam
Rajiwadekar and Anr.

.... Respondents.

Mr. Hemant V. Kenjalkar for the Applicant.

Mr. Rohit Mahadik i/b Khandeparkar and Associates
for Respondent No.1.

Mr. A.R. Kapadnis, APP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 2, 2019

P.C.:-

1] Respondent No.1 – Accused was acquitted of an offence (defamation/slander) punishable under Section 500 of the Indian Penal Code vide judgment and order dated 17/2/2018 passed by the Judicial Magistrate, First Class, District Sindhudurg.

2] Parties to the present Application are closely related.

3] Respondent No.1 – Accused is alleged to have executed Power of

Attorney on 4/4/2007 which has been revoked subsequently. Based on the aforesaid Power of Attorney, it is claimed that the complainant got executed Release Deed of the property which has come to the share of Respondent No.1 in partition.

4] Subsequent thereto, it is claimed that Respondent No.1 has come out with a case that Power of Attorney was obtained by fraud and misrepresentation and as such, differences have arisen.

5] The case of the Applicant is, non-applicant committed an act of slander in the presence of witnesses Milind Samant and Pandhari Samant, who are equally related to the Applicant.

6] By inviting attention of this Court to the evidence of these two witnesses viz Milind and Pandhari, so also to the observations made in the judgment impugned, the learned Counsel for the Applicant submits that the Magistrate has committed an error of law in failing to appreciate the nature of evidence required in deciding the matter of defamation and slander.

7] He would then urge that in the matter of slander, what is required to be appreciated is the defamatory words spoken/uttered to the witnesses. He would also urge that Exception 8 to Section 499 of I.P.C. is incorrectly applied to the facts of the case and that being so, he sought leave to appeal.

8] Considered the submissions.

9] Apart from the fact that Power of Attorney executed in favour of the Applicant was revoked which has given rise to differences between the parties, out of the witnesses who were examined, one of the witnesses viz. Milind Samant is beneficiary of the Deed of Relinquishment about transfer of rights from Respondent No.1 – Accused to the said witness. In view of above, out of differences over the succession to property of Respondent No.1, the Applicant coming out with concocted case cannot be ruled out.

10] The learned Magistrate went on appreciating the evidence and has recorded finding. The witnesses have deposed based on the information received by them in the form of hearsay evidence.

11] The learned Magistrate observed that testimony of both the witnesses viz Milind and Pandhari, if compared and appreciated, it appears that the nature and the manner in which they have deposed before the Court has not reposed faith in the story of the complainant. The aforesaid observations are made, based on the appreciation of evidence as there is complete similarity in the evidence of both witnesses. The view expressed by the learned Magistrate is a very much possible view.

12] No error of law or illegality is noticed in the impugned judgment and order which warrants grant of leave. Application for leave to appeal is rejected.

(NITIN W. SAMBRE, J.)

