

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3975 OF 2016

PRAKASH NARAYAN KARANDE)...PETITIONER

V/s.

SUHAS SHIVAJI BHOSALE (ANPAT) & ANR.)...RESPONDENTS

Mr.Surel Shah, Advocate for the Petitioner.

Mr.Z.A.Qureshi i/b. Mr.Prashant Patil, Advocate for Respondent No.1.

Mr.R.M.Pethe, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 13th FEBRUARY 2020

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2 This is a petition by the original complainant, whose complaint against the accused persons for offences punishable

under Sections 504, 506 read with 34 of the Indian Penal Code came to be dismissed by setting aside the order of issuance of process in the said complaint by the learned Additional Sessions Judge, Malshiras, by the impugned order dated 12th August 2016 passed in Criminal Revision Application No.26 of 2015.

3 Heard both sides. The learned counsel for the petitioner/original complainant argued that entire impugned revisional order is totally silent about the finding as to whether the act alleged was committed in discharge of official duty by the accused public servant. The learned counsel further argued that in paragraph 7 of the impugned order, averments against the accused are incorporated by the learned Revisional Court and there is no finding whether such averments and such acts attributed against the accused are having reasonable nexus with public duty, and therefore, the impugned order needs to be quashed and set aside.

4 The learned counsel for the respondent herein/original accused supported the impugned order by contending that the complaint, as framed and filed, was not maintainable in view of judgment of the Hon'ble Apex Court in the matter of **D.T.Virupakshappa vs. C. Subash**¹. He argued that official duty of the accused was so integrally connected with the alleged act that sanction under Section 197 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C. for the sake of brevity) was necessary. The petitioner/original complainant had not complied with provisions of Section 155 of the Cr.P.C., and therefore, even otherwise, the complaint was not maintainable.

5 I have considered the submissions so advanced and also perused the material placed before me. The private complaint for offences punishable under Sections 504, 506 read with 34 of the Indian Penal Code came to be lodged by the petitioner/original complainant. The accused arraigned in the said complaint is respondent no.1, who happens to be Police Inspector of Police Station Malshiras. The petitioner/original

1 (2015) 12 Supreme Court Cases 231

complainant alleged in his complaint that he had been to Police Station Malshiras for lodging report against one Mahadev Karande. At that time, the respondent no.1 herein and the co-accused were sitting in the police station. It is further averred by the petitioner/original complainant that when he attempted to lodge the report, respondent no.1 herein/accused no.1 abused him in filthy language and threatened to kill him apart from taking him in custody and putting him in the lockup. It is further averred by the petitioner/original complainant that though other people attempted to intervene, the respondent no.1 herein /accused no.1 was not in a mood to listen to them and he started abusing them and threatened to kill them.

6 After entertaining the said complaint and following the procedure prescribed, the learned trial Magistrate thought it fit to send the complaint for investigation under Section 202 of the Cr.PC. The said order was quashed and set aside in revision at the instance of the petitioner/original complainant and the matter was remanded back. Then the order dated 16th August 2014

directing issuance of process for offences punishable under Sections 504, 506 read with 34 of the Indian Penal Code came to be passed by the learned trial Magistrate and this order was impugned by the respondent no.1 herein/accused no.1 by filing the subject Revision Petition bearing No.26 of 2015 before the learned Additional Sessions Judge, Malshiras.

7 Perusal of the impugned order passed by the Revisional Court shows that the Revisional Court briefly narrated the incident alleged in the complaint and then relied on observations of the Hon'ble Apex Court in the matter of **D.T.Virupakshappa (supra)** and straightaway came to the conclusion that it is of the opinion that sanction is necessary under Section 197 of the Cr.P.C. With this observation, the summoning order came to be quashed and set aside. It is seen from the impugned order that the learned Revisional Court has not examined whether there is reasonable connection between the act alleged and performance of the official duty by the accused Police Inspector. The Revisional Court has not examined whether the act

complained of was directly connected with the official duty of the Police Inspector or whether averments are so integrally connected with the office of the Police Inspector so as to make it inseparable from the office held by the accused. Thus, without giving any reason, conclusion is given that sanction under Section 197 of the Cr.P.C. is necessary.

8 In this view of the matter, the impugned order is unsustainable, as the reasons constitute heart and soul of the order passed by the court. As such, the following order :

ORDER

- i) The petition is allowed.

- ii) The impugned order dated 12th August 2016 passed in Criminal Revision Application No.26 of 2015 by the learned Additional Sessions Judge, Malshiras, is quashed and set aside.

- iii) The matter is remitted to the Additional Sessions Court, Malshiras, with a direction to decide the revision petition afresh, according to law.
- iv) Rule is made absolute in above terms.

(A. M. BADAR, J.)

Arti V.
Khatate

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