

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

CRIMINAL APPLICATION (APPA) NO. 1160 OF 2018

Smt. Shalini Madan Puri

..vs..

Devanand Anand Pandagale and ors.

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

Court's or Judge's orders

Shri R.D. Dharmadhikari, Advocate for applicant/appellant.
Shri M.A. Sable, Advocate for respondent nos. 1 to 14.

CORAM : VINAY JOSHI, J.
DATED : 05/01/2021

Heard.

2. The applicant has prayed for condonation of delay of 80 days caused in filing appeal.
3. Learned Counsel for the respondents/accused has fairly given no objection to condone the delay.
4. In view of that, delay stands condoned. The Criminal Application stands disposed of accordingly.

CRIMINAL APPLICATION/APPEAL _____ OF _____

Heard.

2. The appellant i.e. original complainant has sought for special leave to appeal to challenge the order of acquittal passed in Misc. Criminal Case No. 787 of 2007 for the offence punishable under Section 500 of the Indian Penal Code.
3. Initially, the appellant has filed private complaint alleging that in all 14 accused by paper publication dated

07.05.2007 and 12.05.2007 knowingly published a defamatory material with an intent to harm the reputation of the appellant. It is the case that the appellant was a Secretary of a Public Trust which own certain property including a Well. The appellant was managing the affairs of the Trust. In order to protect and for the purpose of safety, she had spread iron net over the Well. According to the appellant near-about 30 to 40 villagers got annoyed by such act of appellant and made false complaints to the Chief Officer and Police Station against her. It was complaint that the appellant had intentionally put gurbaje in the Well and accordingly prevented the villagers from getting Well water. Not only that, the respondents (accused) have also filed complaint to Chief Officer, Nagar Parishad and Police which were published in news papers namely "Deshonnati" and "Dainik Punyanagari". It is the case of appellant that by such publication her reputation has been ruined, therefore, the complaint for defamation.

4. The record indicates that initially the then learned Magistrate took cognizance of the complaint and issued a process against the accused. The evidence before charge was recorded. Learned Magistrate vide order dated 05.01.2011 had discharged some of the accused with a finding that there was no material to proceed against them. Rest of the accused have faced trial. The evidence was led before the Magistrate. On appreciation of evidence, learned Magistrate held that, the appellant failed to establish the essential ingredients to constitute the offence as define under Section 499 of the Indian Penal Code and accordingly, passed the judgment of acquittal.

5. Heard both sides and gone through the available record. The entire complaint was based on two news items published in the news papers as stated above. On minute perusal of news items it reveals that, the news was about grievance put forward by several persons against the appellant for her act of withholding the villagers from taking Well water. Apparently, there is no material to indicate that the said news item was published at the behest of existing respondents. Pertinent to note that, though Editor or Publisher were made party, however complaint was dismissed against them. The appellant has not challenge the said order in the result the prosecution proceeded without the Editor or Publisher who were responsible for the news items.

6. As per the case set out by the complainant, the accused have allegedly filed complaint to Chief Officer and Police Station which appears to be percolated in the news items. There is no material to hold that accused have caused to publish said news item. The truthfulness of the news items is not relevant since it is domain of the public authority. Only on the basis of such complaint, the news has been published putting forward the information about such complaint filed by the accused. Therefore, by any stretch of imagination, it cannot be said that the accused have intentionally caused to publish news items with a view to defame the complainant.

7. To challenge the order of acquittal passed in the case instituted upon complaint special leave to appeal has been sought. The very purpose of inserting Sub Clause (4) to Section 387 of the Code of Criminal Procedure is to nip

the uncalled litigation in the bud. It is a sort of filter to *prima facie* scan the material and weed-out the unmeritorious litigation at the threshold. The above discussion leads me to hold that there is no remote possibility of conviction meaning thereby continuation of proceeding would amount to abuse of the process of Court. Therefore, it is not a fit case to grant special leave and accordingly, application as well as appeal stands dismissed.

JUDGE

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