

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5199 OF 2021

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Date: 2022.12.21
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Rakhee Sachdev & Ors.

...Petitioners

V/s.

Raj Kanaksen Bhansali & Anr.

...Respondents

Mr. Pavan S. Patil for Petitioners.

Mr. Rohan Nabar a/w Mr. Vishwesh Bhise i/by Mr. Lokesh Zade for
Respondent No.1.

Mr. A. R. Patil, APP for Respondent No.2 (State).

CORAM : AMIT BORKAR, J.

DATE : DECEMBER 19, 2022

P.C.:

1. The petitioners are original accused nos.1 to 9 in a prosecution under Sections 500 and 501 of the Indian Penal Code, 1860.

2. The learned Magistrate by order dated 11th February 2019, issued process against the petitioners for offence under Sections 500 and 501 of the Indian Penal Code, 1860. The petitioners challenged order dated 11th February 2019 by filing Criminal Revision Application No.250 of 2019, which has been dismissed by impugned order dated 8th October 2020.

3. Aggrieved thereby, the petitioners have filed present Writ Petition.

4. The respondent no.1 filed a complaint under Sections 500 and 501 of Indian Penal Code, 1860, inter-alia raising following grievance, which according to the respondent no.1 constitutes offence under Sections 500 and 501 of the Indian Penal Code, 1860. The relevant statement in the complaint amongst others, reads as under:-

“It is stated that the Defendant No.1 being a powerful builder with money and muscle power is able to manipulate the system which is meant for the purpose of protecting the innocent citizens, which is clearly evident from the above incidence.”

5. Learned advocate for the petitioners submitted that the statements were made in Civil Suit filed against respondent no.1 and are statements of truth. He invited my attention to the judgment delivered in Special Civil Suit No.867 of 2018 which was decreed by the Civil Court. He submitted that the Civil Court has accepted the case pleaded by the petitioners and has granted relief to the petitioners. The judgment delivered in Special Civil Suit No.867 of 2018 is relevant fact under Sections 42 and 43 of the Indian Evidence Act, 1872. He relied on the judgment of Apex Court in **K. G. Premshanker Vs. Inspector of Police & Anr.**, reported in (2002 (8) SCC 87).

6. I have carefully considered the averments made in the complaint. The portion quoted above, *prima facie*, is defamatory in nature against the respondent no.1. On perusal of the judgment in Special Civil Suit No.867 of 2018, particularly, issues framed

therein, it appears that the Civil Court had not framed a specific issue to consider whether respondent no.1 is a powerful builder with money and muscle power and is able to manipulate system which is made for protecting innocent citizens. The Civil Court while granting relief to the petitioners was considering grievance of the petitioners in relation to violation of their statutory rights conferred under the provisions of the Maharashtra Ownership Flats (Regulations of The Promotion of Construction, Sale, Management and Transfer) Act, 1963 and provisions of the Specific Relief Act, 1963.

7. Whether, the statement quoted above is a statement of truth or not needs to be considered at the time of trial.

8. In the absence of adjudication on the point quoted above, the judgment in Special Civil Suit No.867 of 2018, *prima facie*, cannot be considered as relevant under Sections 42 and 43 of the Indian Evidence Act, 1872.

9. In **K.G. Premshanker** (supra), the Apex Court was considering the effect of decision of Civil Court on the proceedings pending in criminal courts. The Apex Court relying on the Constitution Bench of the Apex Court in **M. S. Sheriff Vs. The State of Madras & Ors**, reported in (AIR 1954 SC 397), held that the judgment in Civil Court may be relevant for a limited purpose such as motive or as a fact in issue and it would depend on the facts of each case.

10. In absence of specific issue and conclusive finding recorded by the Civil Court, the judgment in Special Civil Suit

No.867 of 2018 is of no help to the petitioners to hold that there is conclusive finding recorded by the Civil Court in relation to the statements recorded in paragraph no.21 of the complaint.

11. Considering the scope of Petition challenging order of issuance of process being limited to consider statements on the face of it to be true, in my opinion, the contention raised on behalf of petitioners that the statement was true needs to be adjudicated at the time of trial, after granting opportunity to both sides to lead oral evidence. For the aforesaid reasons, findings recorded by the courts below cannot be termed as perverse nor there is miscarriage of justice.

12. Learned advocate for the petitioners requested for continuation of ad-interim relief dated 7th July 2022.

13. Considering the facts of the case, the ad-interim relief is continued for period of four (4) weeks from today.

14. Writ Petition is therefore disposed of. No costs.

(AMIT BORKAR, J.)