

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.895 OF 2022

MOHAMMED MUSHTAQUE AHMED MOHAMMED ALI SHAH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Mahesh P. Kale
Adv. for Respondent Nos. 2 to 4: Mr. M.V. Ghadge.
APP for respondent No.1 : Mrs. Pratibha J. Bharad.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 28th NOVEMBER, 2023.

ORDER :-

Heard Mr. M.P. Kale, learned advocate for the petitioner, learned APP for State and Mr. Ghadge, learned advocate for respondent No.2.

2. Mr. Kale, learned advocate for the petitioner submits that the petitioner had filed complaint against respondent Nos. 2 to 4 alleging offences punishable under Sections 500, 504 and 506 r/w. 34 of IPC. He would submit that the learned Magistrate without offering an opportunity of hearing to the petitioner, dismissed the complaint vide order dated 11th August, 2020. The revision application was filed against the said order before the learned Sessions Judge at Parbhani. However, same came to be dismissed vide order dated 16.2.2023. Mr. Kale would submit that since the opportunity of hearing was not given to the complainant, it would be just and proper to set aside the impugned order and direct the Magistrate to re-consider the prayer for issuance of process

after hearing the complainant.

3. Mr. Ghadge, learned advocate for the respondent/accused vehemently submits that the allegations in the complaint are relating to the reports made by the accused persons to the competent authorities ventilating their grievances regarding non payment of salary and illegal demands raised by the complainant for that purpose. He would submit that such representation would not constitute an offence punishable under Section 500 of IPC in view of the specific exception carved out under Clause VIII of Section 499 of IPC. He would, therefore, submit that the complaint is rightly rejected.

4. Having considered the submissions advanced, it can be observed that the complainant had failed to lead evidence on the point in issue. On the other hand, he filed pursis at Exh.9, contending that his verification at Exh.7 be considered as evidence for issuance of process. Apparently, it does not appear from the record that the petitioner was deprived of an opportunity of hearing or he was prevented from leading necessary evidence in support of his contention.

5. Perusal of the copy of the revision application which was filed before the Sessions Court challenging the dismissal of the complaint shows that the complainant has not raised any ground of violation of principles of natural justice. The learned Sessions Judge in the impugned order dated 16.2.2022 considered the merits of the matter and found that the representations made by the accused persons to the competent authorities against the complainant regarding illegal demand of money to continue the services or release of salary would not amount to

defamation. Accordingly, upheld the order of dismissal of the complaint passed by the learned trial court.

6. Perusal of the documents which are made part of the complaint depicts that the accused persons have made representation to the Education Officer of Zilla Parishad or Chief Officer of the Zilla Parishad, Parbhani ventilating their grievances regarding non-release of the salary or granting service benefit to them. It is not disputed before this Court that the representations were tendered on behalf of the accused persons to the competent authority who can redress the grievances raised. At this stage, reference can be made to Eighth Exception to Section 499 of IPC, which reads thus :-

“Eighth Exception —Accusation preferred in good faith to authorised person.— 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.”

7. On the face of it, if the contents of the complaint are considered alongwith the representations tendered by the accused persons to the competent authority, it is evident that the no offence can be made out against the accused persons. In that view of the matter, there is no merit in the writ petition. Same is dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-