

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
Criminal Writ Petition No. 501 of 2008
[Varsha Ghanshyam Gaurkar Vs. State of Maharashtra & others]

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

Court's or Judge's orders

Mr. R.J. Mirza, Adv., for the petitioner.
Mrs. M.H. Deshmukh, Addl. Public Prosecutor for respondent
nos. 1 and 11.
Mr. C.R. Sharma, Adv., holding for Mr. S.P. Bhandarkar, Adv.,
for respondent no.3.

**CORAM : A.B. CHAUDHARI AND
P.N. DESHMUKH, JJ.**

DATE : 05th February, 2015.

01. Heard learned counsel for the rival parties at length.

02. Following are the prayers in the Criminal Writ Petition:-

“i] declare that the respondent no. 2 to 6 and 8 have violated the fundamental rights of the petitioner under Article 21 and 14 of the

Constitution of India and thereby damaged her womanly dignity and has caused extreme mental trauma and torture and also caused harm to her reputation;

- ii] restrain the respondents, particularly the respondent no. 2 to 6 and 8 from harassing the petitioner in any manner presently and in future;
- iii] declare that the action taken by the respondent police personnel under section 160 of the Code of Criminal Procedure as illegal;
- iv] direct the respondent no. 1 and 11 to take action against their erring officers particularly the respondent no. 2 to 6 and 8 for causing mental harassment and torture to the petitioner and for degrading and humiliating the petitioner and for failure to discharge their duty;
- v] quash and set aside the complaints dated 23.5.2008 made by the respondent no.2 which are the subject matter of the instant Writ Petition;
- vi] grant a compensation of Rs. 2 lacs for subjecting the petitioner to all kind of indignity, mental harassment and torture caused by the concerned respondents;
- vii] give general direction to the respondent no.1 to direct its officials to comply the provisions of Section 160 of Cr.P.C. scrupulously;
- viii] give general direction to the respondent no.11 to direct its officials to comply with the provision

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of Government Resolution dated 19.9.2006;

- ix] during the pendency of the instant petition stay all the proceedings started by the respondent no.8 against the petitioner particularly at the behest of the respondent no.2 vide his both complaints dated 23.5.2008, in the interest of justice;
- x] grant any other relief as deemed fit and proper by this Hon'ble court in the facts and circumstances of the case, in the interest of justice."

03. In fairness, Mr. Mirza, learned counsel for the petitioner, has pointed out to us the affidavit of respondent no.1 dated 15th February, 2010. The extracted portion of para 1 thereof reads thus:-

"1.
.....It is most respectfully stated that as far as Shri Sandip Karnik, i.e., respondent no.2 is concerned the enquiry has been conducted against Shri Sandip Karnik and he was warned that in future while conducting an enquiry specially in respect of women he should adopt a decent behaviour and such warning has been issued to Shri Sandip Karnik in writing."

Mr. Mirza pointed out the Counter-affidavit also, filed by the petitioner on 6th September, 2010, and in particular Item [I] of para 7 of the said affidavit, which is also quoted hereunder:-

"[i] The respondent no.1 has not called the petitioner, Smt. Chahande and Mr. Kapgate for the Departmental Enquiry (DE)

of respondent no.2; whereas they were called before Mr. Sayed, so also called in the DE of respondent no.3 to 6. The petitioner, Smt. Chahande and Mr. Kapgate were bypassed so that there witnesses can be avoided and so that respondent no.2 is favoured and protected.”

04. The grievance made by the petitioner is that since the petitioner was not called in the Departmental Enquiry that was held by the Govt., against Mr. Karnik, this Court should direct the Govt. to ignore the enquiry report, or to again hold enquiry against Mr. Karnik by setting aside the enquiry that was already held and to call the petitioner as a witness in such enquiry, and then proceed to complete the enquiry. We cannot entertain such a request in criminal writ jurisdiction.

05. Looking to the prayers in the petition, we find that Prayer [I] relates to a declaration about violation of fundamental rights of the petitioner, which prayer, in our opinion, has become infructuous in view of the affidavit that was filed by the Govt. to hold enquiry and accordingly enquiry was held and completed. Prayer [ii] cannot be granted, since it is not the case of the petitioner that again there is harassment. Prayer [iii] is redundant. Prayer [iv] is already taken care of by the Govt. Prayer [v] is again the subject-matter of this Petition which we are disposing of. Prayer [vi] is about compensation, for which we grant liberty to the petitioner to take such steps to claim compensation as are available in law, but not in the present criminal

jurisdiction. Prayer [vii] is rejected. Prayer [viii] is in the nature of general directions. Thus, all the prayers are considered by this Court. In view of the enquiry that was held against Mr. Karnik and a warning was issued to him, we are satisfied that nothing more is to be done. However, the petitioner has a grievance about the manner in which the enquiry was held, i.e., petitioner was not called for enquiry. In that event, we leave it to the petitioner to take such steps as are available in law. Since the petitioner has a grievance about the punishment also, we leave it open to the petitioner to take such steps as are available in law against all the officers against whom the petitioner has a grievance.

06. Criminal Writ Petition No. 501 of 2008 is disposed of.

Judge

Judge

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