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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1331/2016

Sangita d/o Dhondiba Ingole,
age 45 yrs., occu.service
(Head Mistress) r/o Prabhat Nagar,
Nanded Tq. & Dist.Nanded.

...Applicant..

Versus

1] The State of Maharashtra.

2] Shri Abhimanyu s/o Raghunath Kale,
age 50 yrs., occu.service,
r/o Zilla Parishad, Nanded.
Tq. & Dist.Nanded.

...Respondents...

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Shri Suresh M. Kulkarni, Advocate for applicant.
Shri A.B. Girase, Public Prosecutor for respondent no.1.
Shri S.B. Pulkundwar, Advocate for respondent no.2.

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**CORAM: R.M. BORDE &
K.L. WADANE, JJ.**

DATE: 02.05.2016

ORAL JUDGMENT (Per Borde, J.) :

1] Heard learned counsel for the parties. Rule.
Rule made returnable forthwith and with the consent of
learned counsel for the parties, the application is taken
for final disposal at the stage of admission.

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2] This is an application by the applicant, who is serving as the Head Mistress in a school operated by the Zilla Parishad, Nanded. The applicant tendered an application to the Police Inspector, Vazirabad Police Station, Nanded, on 1.2.2016 alleging therein that on 1.2.2016 while she had been to the office of the Zilla Parishad at about 1-30 to 2-00 p.m., the Chief Executive Officer Shri Abhimanyu Kale accosted her near stair-case and asked her to leave the place. It is alleged that he abused her on the ground of caste and pushed her back. The incidence was witnessed by witnesses Baburao Shinde and Namdeo Panchal. According to the complainant, since the incident has taken place at a public place and that she belongs to scheduled caste category, which fact was known to the accused – Abhimanyu Kale, as such an offence under the purview of the Scheduled Caste, Scheduled Tribe (Prevention of Atrocities) Act, 1989, is made out.

3] According to the applicant, since Police did not initiate action, she tendered an application to the Court of Sessions at Nanded, which was registered as Miscellaneous Criminal Application No.17/2016. The applicant requested for directing investigation u/s

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156(3) of the Code of Criminal Procedure, 1973. The learned Sessions Judge, by his order dated 8.2.2016, has refused to issue directions mainly on the ground that the respondent no.2 – accused is a public servant and no sanction has been secured for proceeding against him and as such in view of the bar contained u/s 197 of the Code of Criminal Procedure, no order is deemed necessary directing investigation by the Police. The learned Sessions Judge rejected the said application.

4] The learned counsel appearing for the applicant – complainant contends that the act alleged against the accused does not form the part of his duties and as such the said act cannot be said to have been committed in the official capacity while performing his duties. Reliance is placed on the judgment in the matters of

[1] *Inspector of Police & another v. Battenapatla Venkata Ratnam & another* (2015 ALL MR (Cri) 2064 (S.C.))

[2] *Choudhury Parveen Sultanan v. State of West Bengal & another* (2009) 3 Supreme Court Cases 398

[3] *Rajib Ranjan & others v. R. Vijaykumar* (2015) 1 Supreme Court Cases 513.

5] The learned Public Prosecutor appearing for the respondent no.1 – State placing reliance on the judgment

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in the matter of *Anil Kumar & others v. M.K. Aiyappa & another* (2014 AIR (SC) (Supp) 1801, has contended that in order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect. If the law requires sanction and the Court proceeds against the public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void *ab initio*.

6] In the instant matter, the fact that the petitioner is serving as a Head Mistress in a school operated by the Zilla Parishad and that the respondent no.2 - Abhimanyu Kale is functioning as Chief Executive Officer of the Zilla Parishad, is not a matter of controversy. The incident is alleged to have happened in the premises of the Zilla Parishad. It is a matter of debate as to whether the place where the offence is alleged to have taken place can be said to be a public place within the public view so as to attract the provisions of the Atrocities Act. However, we do not deem it necessary to advert to this aspect at this stage.

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7] Apart from the defence of want of sanction, on many other grounds, the complaint is not liable to be entertained. The Police have conducted a preliminary investigation into the matter. We directed the Superintendent of Police to tender an affidavit in reply, which has been presented by Shri Vishweshwar Prabhakar Rao Nandedkar, Deputy Superintendent of Police, Nanded. It is recorded by the investigating officer in the affidavit that the statements of the witnesses named in the complaint to the Court namely Baburao Amrutrao Shinde and Namdeo Narayan Panchal have been recorded by the investigating machinery. Namdeo Panchal is the Head Master of Zilla Parishad Girls High School at Kinwat. He claims in his statement that the complainant met him at Zilla Parishad office at about 11-40 a.m. He further claims that no incidence, as alleged, has happened in his presence and it is not known as to why his name is referred to by the complainant in her complaint. Similarly, the statement of the Body Guard of the respondent no.2 - Chief Executive Officer is recorded on 2.2.2016 by the Police. He also denies the happening as alleged by the complainant. This witness claims that all

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the while he was with the Chief Executive Officer and it is part of his duties. One Mr.Amjad Khan's statement has been recorded by the Police, who is functioning as the Driver and he is assigned the duties with the Chief Executive Officer. He also has denied the happening as alleged by the complainant.

8] Apart from this, the Deputy Superintendent of Police placed reliance in his affidavit on information in writing tendered by the Chief Executive Officer on 28.10.2015 to the Police wherein he has raised an apprehension that a Union of the employees functioning at Zilla Parishad is likely to tender a complaint against him under the Atrocities Act. The apprehension was expressed in a complaint by the Chief Executive Officer on 28.10.2015 few days before lodging of the complaint by the applicant. It is stated in the application tendered to the District Collector, Nanded, by the Chief Executive Officer on 6.2.2016 that the Teachers' Union has continued agitations against him since the month of October, 2015, for his removal. It is alleged that one Shri Parmeshwar Gonare is the leader of the employees, who has raised slogans in the meetings dated 12.10.2015;

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18.10.2015; 26.10.2015 and 28.10.2015, and has also expressed his intention to lodge complaint against the respondent no.2 – Chief Executive Officer implicating him in a crime under the Atrocities Act. A compact disk of the recording of the proceedings of the meeting wherein threats were extended is presented to the Police authorities. It thus appears that the lodging of the complaint at the instance of the applicant was a part of the conspiracy / design by those who were opposed to continuance of the respondent no.2 as a Chief Executive Officer. The learned Sessions Judge was, therefore, justified in refusing to take cognizance of the application and refusing further investigation in the matter by the Police authorities. The respondent no.2 – Chief Executive Officer is wielding control over the affairs of the Zilla Parishad and is the highest executive authority of the local self-Government. It *prima facie* appears that in order to pressurize the Chief Executive Officer to accept the demands of the employees, he is tried to be implicated in the crime. Apart from this, it cannot be forgotten that the respondent n.2 – Chief Executive Officer had expressed such an

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apprehension few days before lodging of the application by the applicant. Besides this, the witnesses cited in the complaint themselves are not supporting her claim.

9] Considering the affidavit of the investigating officer, we do not deem it necessary to cause interference u/s 482 of the Code of Criminal Procedure, 1973. The application / complaint presented by the applicant itself is *mala-fide* and it has been borne out after the investigation that there is no substance in the complaint. A reasonable inference can be drawn that the applicant is abusing the process of the Court and moving the Police machinery with a view to meet her oblique motive and objectives. While dismissing the instant criminal application, we direct the applicant to pay costs of Rs.10,000/- to the respondent no.2 within a period of four weeks from today. The criminal application is rejected.

(K.L. WADANE, J.)

(R.M. BORDE, J.)