

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 742 OF 2014

1. Sunil S/o Balajirao Mahindrakar,
Age: 43 years, Occu. : Service,
R/o: SDO Office, Dharmabad,
Tq. Dharmabad, Dist: Nanded.
2. Chandrakant Sagar Kadam,
Age: 43 years, Occu. Service,
R/o: Opposite Government Rest House,
Pardi Road, Tq. Bhoom,
Dist. Osmanabad.

... APPLICANTS

VERSUS

- 1 The State of Maharashtra,
Through PSO, Police Station,
Paranda, District : Osmanabad.
- 2 Smt. Vandana W/o Nikhumb Nikam,
Age 47 years, Occu Tahsildar Paranda,
R/o Govt. Quarter, Paranda,
District Osmanabad.

... RESPONDENTS

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Ms Pradnya Talekar, i/b Mr. S. B. Talekar, Advocate for Applicants.
Mr. S. B. Pulkundwar, APP for Respondent No.1/ State.
Mr. Sandeep Gorde Patil, Advocate for Respondent No.2.
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CORAM : **T. V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 27th June, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The proceeding is filed under Section 482 of the Criminal Procedure Code for relief of quashing for FIR No.139 of 2013, registered with Paranda Police Station, District Osmanabad on 11th October, 2013, for the offences punishable under Sections 452, 451 and 354(C) read with 34 of the Indian Penal Code and Section 3(1)(ii) of the SC & ST (Prevention of Atrocities) Act.

3 The crime is registered on the basis of report given by Respondent No.2. She was working as Tahsildar at the relevant time in Paranda. Applicant No.1 was working as Sub-Divisional Officer of that region and Respondent No.2 was subordinate to him. Applicant No.2 was working as stenographer to Applicant No.1 at the relevant time.

4 In the FIR dated 11th October, 2013, Respondent No.2 has made allegations that on 10th October, 2013 at about 07:00 pm to 07:30 pm, when she was sleeping in the bedroom of Government

residential quarter, Applicants came there and they knocked the door of the quarter. It is her case that Applicant No.2 was knocking the door of the window and the Applicants were trying to see as to whether any door of the window was open. It is her case that Applicant No.1 was asking the staff to enter the quarter if any door was open. It is her case that Applicants and others failed to break open the door and she remained inside of the residential quarter. It is her case that the Applicants then peeped into the bedroom through window of the bedroom and due to that she felt that there was outrage of her modesty. On the basis of these allegations, crime was registered for the aforesaid offence. She belongs to scheduled caste.

5 This Court has carefully gone through all the papers of investigation. Some papers are produced by the Applicants also. The submissions made and record show that Respondent No.2 had joined the duty as her first posting as Tahsildar at that place on 11th June, 2013. Record shows that on 20th June, 2013, the then SDO Smt. Thakur was required to issue show cause notice to Respondent No.2 as Respondent No.2 was not present in the office from 18th June, 2013 to 20th June, 2013. Explanation was called as to why Respondent No.2 had left the headquarter without taking permission

and she had not attended important meetings held for that region. Copy of other notice dated 8th July, 2013 shows that Smt. Thakur, SDO was required to issue another notice as on 7th and 8th July, 2013 the Respondent No.2 was not present in the office and she had switched off her mobile. She had gone to Aurangabad without taking permission and she had left the headquarter. She was asked as to why no explanation was offered by her to the notice dated 20th June, 2013. It was expressed by SDO that she was not maintaining discipline, she was not following the orders of the superiors and so action can be taken for indiscipline against her.

6 The record shows that on 11th October, 2013, Applicant No.1, SDO, gave report to the District Collector in respect of incident dated 10th October, 2013. He informed that there there was complaint against Respondent No.2 that she was not remaining present in the office and even at the headquarter and on 9th October, 2013 and 10th October, 2013, she had not turned up to the office. Somebody informed that possibly Respondent No.2 was sick and so SDO took his staff, which included the Circle Officer, Talathi and others and went to the residential quarter of Respondent No.2 in the evening time. It was informed that for two days, she had not even asked to

bring tiffin for her, which was her regular practice. When the door bell was pressed nobody opened the door and so he called Dr. Waike, Medical Officer and two lady nurses. Even after their coming to the residential quarter, Respondent No.2 did not open the door. A show cause notice was also to be served on her about her absence on duty, notice was pasted on the door of the residential quarter.

7 The submissions made show that due to the aforesaid conduct of Respondent No.2, departmental enquiry was started and the inquiry officer has held Respondent No.2 guilty of misconduct. Incident dated 10th October, 2013 was also there in the inquiry and charge was framed against Respondent No.2 in respect of her absence on those days and her conduct on that day. This record was shown to this Court.

8 This Court has perused the papers of investigation and they are consistent with the report given by the SDO to District Collector, which is mentioned above. The record shows that there was no intention of anybody to do anything due to which there was possibility of outrage of modesty. It can be said that the SDO was there and he was asking the staff members to see that Respondent

No.2 opens the door. It was duty of Respondent No.2 to open the door. A Government Servant is supposed to be on duty for 24 hours and as and when the presence of the Government servant is required, the Government servant is bound to turn up to resume the duty. No explanation at all is given by Respondent No.2 as to why she did not open the door on that day. On all previous occasions, she had left headquarter without taking prior permission of superior officer. She had apparently developed habit of remaining absent in office without taking any kind of leave.

9 Some record is produced for Respondent No.2 to show that she had discharged some duty on the aforesaid dates. This record is not that convincing as these are only few endorsements made on few files. Show cause notices were not answered immediately and explanation given by Respondent No.2 is not believed by the inquiry officer also. There was misconduct of indiscipline and insubordination.

10 The circumstance that Respondent had joined first posting on 11th June, 2013 and aforesaid incidents took place within short span show that there was misconduct on the part of Respondent

No.2 either due to incompetency or dishonesty. That aspect will be considered by the department, but in the present proceeding, it can be said that she misused the circumstance like her gender for making such serious allegations against the superior officer and she misused the circumstance like she belongs to scheduled caste for making such allegations against the superior officer. This must have caused harassment to the superior officer. If the superior officer is asked to face trial on the basis of such allegations, no superior officer will be able to control the staff. This Court holds that this is nothing but a sheer abuse of process of law. In view of these circumstances, this Court holds that relief claimed needs to be granted to the Applicants. In the result, the following order is passed:

ORDER

- I. The application is allowed.
- II. Relief is granted in terms of prayer clause (A).
- III. Rule made absolute in those terms.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]