

Station, Aurangabad for the offence punishable under Section 353 and 332 of the Indian Penal Code.

3. During pendency of the application, charge-sheet is filed in the matter. Applicant seeks permission to amend the application so as to challenge the charge sheet. Permission granted. Amendment to be carried out forthwith.

4. Respondent No.2/original complainant who is Police Constable lodged first information report against the present applicant on 05.05.2014, alleging that he was on duty up to 8.30 p.m. at Traffic Branch and after the duty time was over, while he was going to his home at 8.40 p.m. on his motorcycle alongwith his colleague friend Mr. Katkar via Delhi Gate, the applicant who was riding scooty with lady pillion rider, gave dash to their motorcycle. When the complainant advised him to ride the vehicle properly, the applicant made allegation against the complainant of insulting him and outraging modesty of his wife and started quarreling with the complainant and assaulted the complainant on his chest and also broken the name plate/buckle from the uniform of the complainant. The applicant also threatened the complainant that his relative is in Police department he took photo of the

complainant and his motorcycle. The friend of the complainant Mr. Katkar intervened and tried to separate him and as there was mob of public his friend informed the control room. The complainant noted the Scooty No. MH-20 4179 and lodged complainant against the rider of the Scooty i.e. applicant. With these allegations, offence as referred above came to be registered against the applicant.

5. Heard Mr. Patel, learned counsel for the applicants and Mr. Salgare, learned APP for the respondents state.

6. From the contents of the first information report it appears that on 05.05.2014, at about 8.40 p.m. the applicant who was riding scooty with lady pillion rider, gave dash to motorcycle of the applicant Constable who was going home after his duty hours. When the complainant asked the applicant to stop and advised him to ride the vehicle properly, the applicant made allegation against the complainant of insulting him and outraging modesty of his wife and started quarreling with the complainant and assaulted the complainant on his cheek and also broken the nameplate from the uniform of the complainant. On the basis of such complaint, offences punishable under section 353 and 332 IPC came to be registered against the applicant.

7. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not sufficient. Particulates of offence committed by accused and role played by them in committing that offence need to be stated. Section 353 I.P.C. provides punishment for using assault or criminal force to deter public servant from discharge of his duty. Section 332 deals with voluntarily causing simple injury to public servant in discharge of his public functions. The offence should have been committed against public official when the official was discharging his official duties as a public servant. So, it is to be established that the complainant was discharging his official duties as a public servant at the time of alleged incident committed by the applicant with which he is charged in the present case. From the contents of First information itself, it appears that the alleged incident took place at about 8. 40 p.m. when the complainant was going to his home after his duty hours. Therefore at the relevant time the complainant was not on duty and therefore he cannot be treated as public servant performing official duty. He was neither on duty nor in the office premise. The alleged incident or alleged act of the applicant does not in any way created any obstruction while the complainant was working and discharging his public duty. At the most

it can be said an offence of assault or petty quarrel. Therefore, prima facie the complainant does not attract ingredients of section 353 and 332 of the Indian Penal Code and the does not constitute offence alleged against applicant. Nothing can be achieved if criminal proceedings are allowed to be continued against the applicant for the alleged offence. Therefore, we found considerable force in the argument of Mr. Patel, learned counsel for the applicant for quashing the F.I.R. and charge sheet filed against the applicant.

8. In view of the above, in order to prevent the abuse of process of law, application is allowed.

9. First information report bearing bearing Crime No. I-73/2014 registered with Begumpura Police Station, Aurangabad and consequential charge sheet filed against the applicant for the offence punishable under Section 353 and 332 of the Indian Penal Code are hereby quashed and set aside.

10. Rule is made absolute in the above terms.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

JPC