

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

CRIMINAL APPEAL NO. 613 OF 2018

1. Namit Vinod Agrawal
Age : 30 years, Occu: Lawyer,
R/o: At/Post. Kallumal Bhavan,
Hiralal State, Agrawal Street, Raviwar
Peth, Nashik, Tal & Dist. Nashik. **Appellant**

VERSUS

1. The State of Maharashtra,
through Investigation Officer CIDCO,
MIDC Police Station, Aurangabad, Tal
& Dist. Aurangabad.

Copy to be served on the Public
Prosecutor, High Court of Bombay,
Bench at Aurangabad.

2. Namrata Anilkumar Sonkamble,
Age : 28 years, Occu : Nil,
R/o : At/post. 5/4/62, Shahanurmiya
Dargha, Usmanpura, Pirbazar,
Aurangabad, Tal & Dist. Aurangabad. **... Respondents**

WITH

CRIMINAL APPEAL NO. 458 OF 2018

1. Sandeepkaur D/o Nirmalsingh Bood
Age : 27 years, Occu: Private Service
R/o: Plot No. 15, Limyewadi, Behind
Sindhi Colony, Aurangabad. **Appellant**

VERSUS

1. The State of Maharashtra,
through P.I. CIDCO, MIDC
Chikalthana Police Station
Aurangabad.
2. Namrata Anilkumar Sonkamle,
Age : 27 years, Occu : Service,
R/o : 5/4/62, Shahanurmiya Dargha
Road, Osmanpura, Peer Bazar, ...
Aurangabad.

Respondents

Mr. S. P. Brahme and Mr. A. R. Syed for the Appellant
(in Cri. Apeal / 613 / 2018)

Mr. A. M. Hajare, for the Appellant (in Cri. Apeal /458 /2018)

Mr. Y. G. Gujarathi, APP for the Respondent No. 1 – State.

Mr. B. R. Warma h/f Mr. M. G. Kochar for respondent No.2.

CORAM : K. L. WADANE, J.

Reserved on : 04th October, 2018

Pronounced on : 05th October, 2018

JUDGMENT:

1. The aforesaid two appeals are presented by two accused persons namely, Namit Vinod Agrawal and Sandeepkaur d/o Nirmalsingh Bood.

2. The respondent No. 2 herein, lodged a complaint to the police station, MIDC CIDCO, Aurangabad, alleging that she was working as an Admin Executive, with Junwei Electronics Pvt. Ltd. near

Prozon Mall, MIDC, Chikalthana, Aurangabad, during the period from 05.07.2017 to 03.11.2017. The accused Namit Agrawal was Legal Adviser and accused Sandeepkaur was HR Executive of the same company, where the respondent No. 2 was serving. It is further alleged that the accused Namit was sending messages to the respondent No. 2 on WhatsApp at late night and he was asking questions on the personal life of the respondent No. 2 by saying, whether she is married, whether she has a boyfriend ? The respondent No. 2 was avoiding the accused Namit, therefore, he started to give trouble to respondent No. 2 and also started to defame her in the office. It is further alleged that the respondent No. 2 noticed that the accused Namit recorded her video shooting on his mobile, on which the respondent No. 2 inquired with the accused Namit on which he raised his voice.

3. It is further alleged that the respondent No. 2 used to visit Vivo Exclusive Store, where one Mayur Agrawal was working as Store Keeper and the accused persons connected the name of the respondent No. 2 with Mayur and they started a defamation of the respondent No. 2. Due to the aforesaid circumstances, another accused Minalsingh demanded resignation of the respondent No. 2. On the instruction of the accused Namit, accused Sandeepkaur circulated the photographs

amongst the staff of the office through mobile. It is further alleged that the accused Namit has started ill-treatment to the respondent No. 2 as she is good looking girl and he tried to develop the intimacy with her. She further alleged that the accused Namit tried to develop intimacy and once said that the respondent No. 2 is belonging to Mahar community. Due to the aforesaid act of the accused persons, the respondent No. 2 was humiliated in the public place, therefore, offence came to be registered against the present applicants along with other staff members for the offence punishable under Section 354 – D of the Indian Penal Code and under Section 3 (1) (13) and 3 (1) (14) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

4. Heard, Mr. S. P. Brahme, learned counsel for the appellant in Criminal Appeal No.613/2018, Mr. A. M. Hajare for the appellant in the Criminal Appeal No.458/2018, the learned APP for the State and Mr. Warama learned counsel for the respondent No. 2 in both the appeals. During the course of argument Mr. Brahme, the learned counsel for the appellant invited my attention to the various document including the copy of the earlier complaint dated 27.10.2017. The copy of the order passed by the Division Bench of this Court and the other relevant document and has argued that there was a professional rivalry between

the appellant and the respondent No. 2. By referring the contents of the earlier complaint i.e. first in time dated 27.10.2017 and subsequent complaint dated 01.02.2018, argued that there are no specific allegation in the first complaint dated 27.10.2017 as regards humiliation of the respondent No. 2 in the public place on the ground of her caste, however, in the subsequent complaint the respondent No. 2 after thought made a material improvement and addition in the complaint and thereby, improved the version from the earlier complaint.

5. Mr. Warma, the learned counsel for the respondent No. 2 has argued that when the respondent No. 2 approached to the concerned police on 26.10.2017 the police avoid to take the complaint and on 27.10.2017 the complaint of the complainant - respondent No. 2 was recorded briefly and entire grievance of the respondent No. 2 was not reduced into writing by the police. He further submitted that the police was insisting to compound the offence and they were not ready to register the offence.

6. Mr. Warma, further submits that when the police refuses to take the cognizance, therefore, the respondent No. 2 was constrained to approach this Court and division bench of this Court in the writ petition gave certain direction to the police. On perusal of the copy of the order

passed in the writ petition No. 1621/2017 filed by the respondent No. 2, it appears that the Division Bench of this Court observed as follows:

“05. In view of the submission of the learned Counsel for the petitioner, we are not inclined to consider the aspect of the personal grudge as raised by the learned Addl. Public Prosecutor. In our opinion, ends of justice would be met by directing the petitioner to approach concerned Police Station on a specific date and if the petitioner approaches the Police Station concerned, the Police Station in-charge or officer of the said Police Station to take appropriate steps as provided under the provisions of law.

06. Learned Counsel appearing for the petitioner, on instructions, submitted that the petitioner is ready to approach the concerned in-charge Police Station officer, tomorrow i.e. 01st February 2018 and the in-charge Police Station officer to take necessary steps as provided under the provisions of law.”

7. After passing the aforesaid order, immediately, the respondent No. 2 went to the police station on 01.02.2018 and lodged a complaint as referred earlier. On perusal of the relevant papers, it appears that immediately on next date i.e. on 28.10.2017 the respondent No. 2 made a grievance before the Adhyaksh, Rajya Mahila Ayog, Maharashtra Rajya, and subsequently, by sending mail to the Commissioner of Police, the the respondent No. 2 made various grievance.

8. Copy of the station diary of the concern police station dated

26.10.2017 is placed on record, from which, it appears that the respondent No. 2 approached to the Police Station Officer for the purpose of filing complaint, however, as the complainant was intending to take lunch, therefore, she went away and at about 17:00 hours the respondent No. 2 again came to the police station along with her mother. The concern police station officer accepted the complaint, however, again the respondent No. 2 and her mother went away. This endorsement was taken by one Arshad Ahemad Ekbal, Head Constable. Looking to the contents of the station diary, it reveals that at the relevant time, there was no reason for this police station officer to record false entry in the station diary. Mr. Warma the learned counsel for the respondent No. 2 was repeatedly harping on the point that the detail complaint and the allegations of the respondent No. 2 are not recorded by the police. The police officer was on duty at the police station and the complaint was recorded in brief. So there was no specific allegation in the complaint dated 27.10.2017. *Prima facie*, the argument of Mr. Warma is not acceptable because on perusal of the station diary dated 27.10.2017, it appears that on that day the complainant came along with typed complaint signed by her. On perusal of the complaint, dated 27.10.2017, it appears that it was received by the concerned police station

at about 17:08 hours. It was already signed and it was type written. From the language, in the beginning paras indicated that the contents of the complaint dated 27.10.2017 were written by the complainant herself and it was signed and that complaint was registered at serial No.23.

9. Since, *prima facie*, it appears from the record that the type written and signed complaint was tendered by the complainant to the police station, therefore, it cannot be said that the concern police officer has not recorded the complaint of the complainant in detail as per her version. So looking to the allegations in the complaint dated 27.10.2017, it appears that initially there was no allegation against the appellants that they have humiliated the respondent No. 2 on the ground of her caste. From the contents, it appears that the appellant Namit was sending messages on WhatsApp and he was asking personal questions as to whether the respondent No. 2 had a boyfriend and whether she is married. Except this there are no allegations and the allegations in the complaint dated 27.10.2017 are not sufficient to attract any offence punishable under the SC and ST Act. Furthermore, the other accused persons namely Pratap Solunke and Adnan Patrawala were released on bail by this Court in Criminal Writ Petition No. 175/2018 and Criminal Writ Petition No. 223/2018.

10. Mr. Warma the learned counsel for the respondent No. 2 submitted that the custody of the aforesaid person is required for the purpose of recovery of CCTV footage of the company. However, the investigating officer can very well investigate about the CCTV footage as well as he can recover the CCTV footage, if something is found objectionable.

11. Mr. Brahme, the learned counsel for the appellants has relied upon the observations in *Bhadresh Bipinbhai Sheth Vs. State of Gujarat and Ors.* reported in *AIR 2015 SC 3090*, in support of his argument and has argued that the custodial interrogation of the appellants is not necessary. On perusal of the entire papers of investigation and the allegations in the first complaint dated 27.10.2017, I do not think that the custodial interrogation of the appellants is required for the purpose of investigation. The investigating officer can very well investigate the matter without their custody. In such circumstances, the appellants can be granted protection from their arrest.

12. The aforesaid observations are made *prima facie* for the disposal of the appeals and the trial court shall not influence about the same at the disposal of the trial.

13. In view of the above, the following order is passed:

ORDER

- i. The Criminal Appeal No. 613/2018 and Criminal Appeal No. 458/2018 are allowed and the impugned order in both the criminal appeals are set aside.
- ii. In the event of arrest of the appellants they be released on furnishing their PR and SB of Rs.30,000/- each.
- iii. The appellants to attend the concerned MIDC CIDCO Police Station Dist. Aurangabad on every Wednesday and Sunday from 09.00 a.m. to 11.00 a.m. and maintain a diary of their attendance duly countersigned by the Investigating Officer or the police station officer till the filing of the charge-sheet.
- iv. Appellants shall not tamper with the prosecution evidence in any manner.
- v. The appeals are disposed of accordingly.

(K. L. WADANE, J.)