

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

Criminal Writ Petition No. 0690 of 2013

District : Osmanabad

Devendra s/o. Babruvahan Bhondve,
Age : 38 years,
Occupation : Service as
Assistant Teacher,
R/o. Kallam, Taluka Kallam,
District Osmanabad.

.. Petitioner
(Original
accused
no.02)

versus

01. The State of Maharashtra,
Through Police Station Officer,
Yermala Police Station,
Taluka Kallam,
District Osmanabad.

.. Respondents
(No.02 -
Original
complainant)

02. Seema w/o. Kanhnojirao Shirsat,
Age : 37 years,
Occupation : Service,
R/o. Kallam,
District Osmanabad.

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Mr. N.V. Gaware, Advocate, for the petitioner.

*Mrs. P.V. Diggikar, Additional Public Prosecutor,
for respondent no.01.*

Mr. M.P. Tripathi, Advocate, for respondent no.02.

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With

Criminal Application No. 04101 of 2013

District : Osmanabad

01. Shivaji s/o. Madhav Gosavi,
Age : 55 years,
Occupation : Service,
working as a Head Master,
R/o. Yermala, Taluka Kallam,
District Osmanabad.
02. Digamber s/o. Tukaram Khamkar,
Age : 41 years,
Occupation : Service (Teacher),
R/o. Yermala, Taluka Kallam,
District Osmanabad.
03. Priti d/o. Shivaji Gosavi,
Age : 27 years,
Occupation : Service
(Asst. Teacher),
R/o. Yermala, Taluka Kallam,
District Osmanabad.

.. Applicants.

versus

01. The State of Maharashtra,
through Secretary,
Home Department,
Maharashtra State,
Mantralaya, Mumbai.
02. P.I. Police Station,
Yermala, Taluka Kallam,
District Osmanabad.
03. Shina d/o. Kanujirao Shirsath,
Age : 37 years,
Occupation : Service (Teacher),
R/o. Yermala, Taluka Kallam,
District Osmanabad.

.. Respondents
(No.03 -
Original
complainant)

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Mr. V.D. Salunke, Advocate, for the applicants.

*Mrs. P.V. Diggikar, Additional Public Prosecutor,
for respondents no.01 and 02.*

Mr. M.P. Tripathi, Advocate, for respondent no.03.

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**CORAM : T.V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 25TH OCTOBER 2018.

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :

01. Criminal Writ Petition No. 690 of 2013 has been filed by original accused No. 2 and Criminal Application No. 4101 of 2013 has been filed by original accused No. 1, 3 and 4 for quashing First Information Report (FIR) bearing Crime No. 105 of 2013 registered with Yermala Police Station, Tal. Kalamb, Dist. Osmanabad for the offence punishable under Section 3 (1) (x), 3 (1) (xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as well as under Section 354 r/w. 34 of Indian Penal Code. The said FIR has been lodged on the basis of complaint made by respondent No. 2. Applicant No. 1 in Criminal Application No. 4101 of 2013 is the Head-Master, and petitioner in Criminal Writ Petition No. 650 of 2013 and other applicants from application are the teachers, working in Dnyan Udyog Madhyamik va Uchha Madhyamik Vidyalaya, Yermala.

02. Respondent No. 2 is also serving as teacher in Dnyan Udyog Madhyamik va Uchha Madhyamik Vidyalaya,

Yermala. She is member of Scheduled Caste and therefore, the Head-Master used to harass her, physically as well as mentally, intentionally. Head-Master i.e. Accused No. 1 used to call her alone in his chamber and talk her with ill-intention and insult her in presence of accused No. 2 to 4. They all used to laugh at her. Accused No. 1 called her around 11.30 a. m. on 05-08-2013 in office and told her that if she keeps relations with him, he will not harass her. He went near her and by catching her hand, tried to pull her. She rescued herself by giving jerk and went home. She disclosed the incident to her husband on the next day and then lodged FIR.

03. Applicants and Petitioner have contended that the story in the FIR is false and has been filed with mala fide intention in order to wreak personal vengeance against them. It is filed belatedly, and the delay has not been explained properly. The contents of the FIR do not disclose any offence. There are no allegations made against them which will amount to humiliate respondent No. 2 by way of her caste. There was no use of force. Head-Master has contended that behaviour of respondent No. 2 was not proper. She used to remain absent without any ground and was not performing her duty as directed. Notices were issued to her, which she has replied. She has misused the provisions of Atrocities Act. They have therefore, prayed for quashing the FIR.

04. Heard learned Avocate Shri. N. V. Gaware for petitioner, learned Advocate Shri. V. D. Salunke for applicants, learned A. P. P. Mrs. P.V. Diggikar for respondent No. 1 - State and learned Advocate Shri. M. P. Tripathi for respondent No. 2 in both the proceedings. Perused the police papers and affidavit-in-reply. Affidavit-in-reply contains the same allegations against petitioner and applicants, hence, they are not reproduced again. All of them have argued in support of their respective contentions.

05. Bare perusal of FIR would show that allegations are made against petitioner and applicants No. 2 and 3 in Criminal Application No. 4101 of 2013, that in their presence the Head-Master used to talk with ill-intention and they used to insult her. All of them used to laugh at her. What used to be their talk, subject of the talk, which words used to be uttered by them, when such incident took place, whether it was on regular basis and if it was going on from a quite some time, then since when it was started ? All these questions have been left unanswered by informant. Unless we get answers of these questions, it can not be said to take us to any of the ingredients of the offence. All these other teachers were admittedly not present at the time of second incident, which is stated to have taken place on 05-08-2013. None of these persons have uttered anything in the name of

caste to the informant. Therefore, there is absolutely no evidence against these persons. They can not be asked to face the trial with such scanty evidence. Their case is squarely falling in the guidelines issued by Hon'ble Apex Court in *State of Haryana v/s. Ch. Bhajanlal* [AIR 1992 SC 604] for exercising inherent powers of this Court.

06. Applicant No. 1 – Head Master in Criminal Application No. 4101 of 2013 is stated to have expired and therefore case abated against him.

07. For the afore-said reasons following order is passed.

ORDER

1. Criminal Writ Petition No. 650 of 2013 and Criminal Application No. 4101 of 2013 to the extent of applicant No. 2 and 3 is hereby allowed.
2. Relief is granted against them in terms of prayer clause "B".
3. Criminal Application No. 4101 of 2013 stands abated against applicant No. 1.
4. Rule is made absolute in those terms.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE

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