

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

CRIMINAL WRIT PETITION NO. 1089 OF 2014

Madhav S/o Balajirao Nilawad,
Age: 50 years, Occu. Govt. Service,
Sub Divisional Officer, Kalamnuri,
R/o Pundlik Nagar, Aurangabad.

... **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through Police Station Hingoli (City),
Dist. Hingoli.
2. Umaji S/o Rajaram Bothikar,
Age 44 years, Occu. Govt. Service,
Nayab Tahasildar, Hingoli,
District Collector Office, Hingoli,
District Hingoli.

... **RESPONDENTS**

...
Mr. N. B. Khandare, Advocate for Petitioner.

Mr. S. J. Salgare, APP for Respondent No.1 / State.

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

DATE : 26th October, 2018.

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

. The proceeding is filed for relief of quashing of FIR

No.3076 of 2014, registered with Hingoli City Police Station, District Hingoli, for the offences punishable under Section 32 of the Representation of the People Act, 1950 and Section 134 of the Representation of the People Act, 1951.

2 Both the sides are heard.

3 The crime is registered on the basis of report given by Naib Tahsildar as the officer of Election Commission of Hingoli District on 12th September, 2014. In the report, it is mentioned that the present Petitioner, Nilawad was posted as Sub Divisional Officer, Kalamnuri and also Returning Officer for the constituency No.93, Kalamnuri Vidhan Sabha. It was informed that from 9th September, 2014, without taking sanction of leave, Nilawad had remained absent on duty and when election program was declared on 12th September, 2014, he did not turn up to the office. It was informed that he was avoiding to discharge his duty as an officer of Election Commission and he had remained absent without taking sanction of leave and as he disobeyed the orders made by the superior officers, he committed the offences under the aforesaid provisions.

4 In support of the aforesaid contentions made in the FIR, in reply affidavit, it is again contended that the election was declared and as per routine procedure, the Petitioner was declared as Returning Officer of the aforesaid constituency and so it was necessary for him to immediately resume duty and as he did not resume duty, he committed offence punishable under Section 134 of the Representation of the People Act, 1951. It is contended that he was absent from duty from 9th September, 2014 and he had sent application on e-mail on 11th September, 2014 for seven days medical leave, but leave was not sanctioned and it was necessary for him to remain present at the work place.

5 The learned counsel for Petitioner submitted that the Petitioner was sick and there is certificate to that effect dated 9th September, 2014 issued by the Medical Officer of Civil Hospital. It is submitted that he was advised to take rest of atleast one week and the ailment mentioned as "Hypertension with Angina". There is also record to show that on 11th September, 2014, it was communicated to the Petitioner that considering the necessity of preparation for elections of State Legislative Assembly of 2014, his leave application was rejected and he was expected to resume on duty immediately.

Admittedly, the present Petitioner did not turn up to resume duty. As he did not resume duty on 12th September, 2014, action was taken by the District Election Officer, District Collector and the present Petitioner was put under suspension. Then action was taken to give report to police for registration of crime.

6 The learned counsel for Petitioner mainly submitted that the act of the present Petitioner does not amount to offence under any of the aforesaid provisions. This submission is not at all acceptable. The provisions of Section 134 of the Representation of the People Act, 1951 reads as under:

“134. Breaches of official duty in connection with elections.— (1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees.

(1-A) An offence punishable under sub-section (1) shall be cognizable.”

7 The aforesaid provision is sufficient to show that lapse like present one of the Petitioner is covered by the provisions of Section

134 of the Representation of the People Act, 1951. Thus, it cannot be said that the Petitioner has not committed any offence. This Court holds that relief cannot be granted to the Petitioner. Such incidents are increasing day by day and if such indiscipline is tolerated, it will be difficult for the Election Commission to conduct the elections. In the result, the following order is passed:

ORDER

- I. The petition is dismissed.
- II. Interim relief, if any, stands vacated.
- III. Rule is discharged.

[SMT. VIBHA KANKANWADI, J.]

[T. V. NALAWADE, J.]

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