

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1160 OF 2013

Shri Vaijinath Girappa Ghodke,
Age 41 years, Occu. Service,
Resident of : Tuljabhavani Sainik
Vidyalaya, Tuljapur, Taluka
Tuljapur, District Osmanabad.

....Petitioner.

Versus

1. Sau Kalpana Mahadeo Rochkari,
Age 32 years, Occu. Service,
Resident of : Bhavani Road,
Tuljapur, Taluka Tuljapur,
District Osmanabad.

2. The State of Maharashtra,
Through Office In-charge
Tuljapur Police Station,
Taluka Tuljapur, District
Osmanabad.

....Respondents.

Mr. Mukul S. Kulkarni, Advocate for petitioner.

Mr. S.J. Salgare, APP for respondent No. 2/State.

**CORAM :T.V. NALAWADE AND
SMT. VIBHA KANKANWADI, JJ.
DATED : 29/10/2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The proceeding is filed for relief of quashing of F.I.R. No. 149/2013 registered with Tuljapur Police Station for offence punishable under section 308 of Indian Penal Code. Heard both the sides.

2) The crime is registered on the basis of report given by respondent Kalpana Rochkari. She is working as Junior Clerk in Tuljabhavani Sainik Vidyalaya, Tuljapur where present applicant is working as Headmaster. It is her contention that the present applicant was unnecessarily harassing her and he was not sanctioning leave to her. It is contended that she was asked to do heavy work even when she was pregnant and leave was not sanctioned to her when she was in need of leave during her pregnancy.

3) The first informant has made allegations that on 31.10.2013 her daughter aged about 11 months became sick and she was suffering from dysentery. It is her contention that she contacted applicant on phone and requested for sanction of leave. It is her case that she admitted her daughter in the hospital of Dr. Moghe. It is her case that on that day, she could not attend the duty as her daughter was required to be admitted and she could not attend the duty on the next day. It is her case that she again contacted the applicant and requested that she would file leave application subsequently. It is contended that the present applicant said that he would not sanction the leave and he would recommend to suspend her. It is her contention that she had sent the leave application, but direction was given to her to resume the duty.

4) It is the contention of the first informant that on 3.11.2013 her daughter was discharged, but she could not go to school as on 4th and 5th it was Diwali festival. It is her contention that on 6.11.2013 she went to school with her daughter Praneti as Praneti was still not feeling well. It is her contention that when she requested to allow her to resume duty, the applicant refused to allow her to join duty and informed that recommendation was already made by him to suspend her. It is her contention that on that day, she remained in the school premises and due to that her daughter could not receive treatment which she was expected to take as follow up treatment.

5) It is the case of first informant that on that day the condition of her daughter became deteriorated and she was again admitted in the hospital from Solapur, but she died there on 7.11.2013. It is her contention that on 6.11.2013, she was not allowed to join the duty and due to that, she remained present in the school premises and that became the reason for deterioration of the health of her daughter. When her daughter died on 7.11.2013, she gave report to police on 8.11.2013.

6) The aforesaid circumstances show that even if they are

accepted as they are, it cannot be said that the applicant is responsible for the death of daughter of the first informant. If her daughter was sick, in ordinary course, it was necessary for the first informant to take her daughter first to doctor. Fault cannot be said to be of applicant for that circumstance. The record shows that in the past also, action was required to be taken against her as she was in the habit of availing leave. The reply given by her to show cause notice shows that she was blaming the superiors for everything. For proof of offence punishable under section 308 of IPC, the ingredients of section 308 of IPC need to be made out. It cannot be said that the applicant either abetted to commit the culpable homicide of that child or he abetted the offence of culpable homicide or he committed the offence of culpable homicide. In the result, the petition is allowed. Relief is granted to the applicant in terms of prayer clause 'A'. Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI, J.]

[T.V. NALAWADE, J.]

ssc/