

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

CRIMINAL WRIT PETITION NO. 354 OF 2019

Archana Kantilal Mohite,
Age: 32 yrs., Occ. : Service,
R/o H. No. 749-A, Old Bhoi Galli,
Nandurbar Tq. Dist. Nandurbar.

...PETITIONER.

Versus

1 The State of Maharashtra,
Through,
The Secretary, Home Department
Mantralaya, Mumbai- 400 032

2 Inspector General,
Nashik Range,
Nashik

3 Superintendent of Police,
S.P. Officer, Nandurbar,
Tq. Dist. Nandurbar

4 Girish Patil
Police Inspector,
City Police Station Nandurbar,
Tq. Dist. Nandurbar
(The name of Respondent No.4 is
deleted as per the Hon'ble Court's
order dated 05.04.2019.)

5 Yogita Sunil Patil,
Investigation Officer,
Crime No. 37/2019
City Police Station Nandurbar,
Tq. Dist. Nandurbar

...RESPONDETNs.

Mr. S.B. Rajebhosale, Advocate for petitioner.

Mr. S.B. Joshi, APP for respondent/State nos.1 to 3.

**WITH
CRIMINAL APPLICATION No.733 OF 2019**

Raghunath S/o Dadaji Bhoje,
Age-55 years, Occu. Service as
District Civil Surgeon,
R/o Civil Surgeon Bunglow,
Nandurbar, Dist. Nandurbar.

...APPLICANT

Versus

1 The State of Maharashtra,
Through: Investigation Officer
Nandurbar City Police Station,
Nandurbar, Dist. Nandurbar.

2 Archana Kantilal Mohite,
Age: 32 yrs., Occ. : Service,
(as Sickle Cell Technician),
Electrophoresis Department,
Civil hospital, Nandurbar,
Tq. & Dist. Nandurbar.

...RESPONDENTS.

Mr. Mahesh S. Deshmukh, Advocate for petitioner.

Mr. S.B. Joshi, APP for respondents/State.

Mr. S.B. Rajebhosale, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
MANGESH S. PATIL, JJ.**
DATED : 11/04/2019.

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

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) Criminal Application is filed under section 482 of Criminal Procedure Code for relief of quashing of F.I.R. No. 37/2019 registered with Nandurbar City Police Station, Nandurbar for

offences punishable under sections 354, 354-A, 354-D, 509 of Indian Penal Code. Criminal Writ Petition is filed by the first informant for relief of direction to transfer the investigation of the aforesaid C.R. to other police station or other police officer.

3) The crime is registered on the basis of report given by the petitioner of Criminal Writ Petition on 5.2.2019. The report is given in respect of the incident dated 22.1.2019 and general so called misconduct of the applicant of the second proceeding. The first informant is working on contract basis in Civil Hospital, Nandurbar as Electro Forensic Technician. The accused is working as Civil Surgeon. It is the grievance of the first informant that the Civil Surgeon is asking her to do other work than the work which can be assigned to the post of technician. It is her contention that Civil Surgeon has been harassing her mentally and physically and in respect of that misconduct she had given complaint to District Collector. It is her contention that she had given representation dated 7.9.2017 also to the Committee created to consider the grievance of lady employees and she had given complaint to Chief Executive Officer of Health Department on 17.3.2018.

4) She has made allegations that the Civil Surgeon was following her after the office hours and he was asking her to allow

him to have physical relations with her. It is her contention that on 22.1.2019 at about 1.00 p.m. to 1.30 p.m. when she had gone to cabin of Civil Surgeon to make enquiry about the increase in the allowance of her post, in law voice, Civil Surgeon promised to increase the allowance, subject to condition that she allows him to have physical relationship with her. It is her contention that at that time, Dr. Khedkar was present in the cabin. On the basis of the complaint dated 5.2.2019 which was given after about 15 days the crime came to be registered.

5) Both the sides produced some record and the record includes the enquiry made by the Committee constituted as per the directions given by the Apex Court in **Vishakha's** case. The report dated 18.9.2011 shows that necessary enquiry was made and it was found that the first informant was not discharging the duty properly and she was in the habit of making complaints against the co-staff and superiors and she was causing damage to the image of entire office. Her performance was not at all satisfactory and the Committee had recommended to see that her services are terminated. To ascertain the truth in the allegations made by the first informant this Court has gone through the allegations made in the F.I.R, statements of the witnesses recorded particularly in respect of the specific incident. Doctor named in the F.I.R. has said

that the allegations are false. One staff nurse had taken the first informant to the cabin on that day, has also stated that the allegations are false. There is record of C.C.T.V. footage showing that in respect of the specific incident, there is nothing and at the relevant time, the accused was sitting on the table and offer handing over one paper, she left the cabin.

6) Fixing of the allowance is not the job of Civil Surgeon and that is done by the authority like Director of the concerned department and then the Government. When the performance of the first informant was itself not satisfactory, there was no question of increasing allowance in her case separately. Generally as a policy decision, the allowance is increased and that benefit is given to all the employees discharging similar duty. In any case, it appears that the superiors were not happy with her performance and the first informant wants to pressurize them and that is why she has given such complaint. She was expressing grievance against colleagues also and that conduct shows that without doing work she wants to get allowance. This Court holds that it will be abuse of process of law if the accused is directed to face the trial for aforesaid offences if the case is filed by the police. Similarly, no direction can be given of making investigation by other officer. In the result, following order is made :-

ORDER

(I) Criminal Writ Petition of the first informant is dismissed. Rule is discharged in this proceeding.

(II) Criminal Application filed by the accused is allowed. Relief is granted to him in terms of prayer clause 'B'. Rule is made absolute in the case of accused.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]

ssc/