

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

CRIMINAL APPLICATION NO. 369 OF 2018

Archana Nivrutti Bhange,
Age 44 years, Occu. Service,
R/o. Kranti Nagar, Beed,
Tal. & District Beed.

....Applicant.

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai.
2. The Police Inspector,
Police Station, Peth Beed,
Tal. & District Beed.
3. Ramesh s/o. Marutirao Gaikwad,
Age 55 years, Occu. Service as
Assistant Police Inspector,
Police Station, Peth Beed,
Tal. & District Beed.

....Respondents.

Mr. S.S. Thombre, Advocate for applicant.

Mr. K.S. Patil, APP for respondent Nos. 1 to 3.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATED : 14/01/2020.

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

- 1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.
- 2) The proceeding is filed for relief of quashing of

proceeding of S.C.C. No. 429/2016 which is pending in the Court of Judicial Magistrate, First Class, Beed. The case is filed for offences punishable under sections 186, 187, 188 and 34 of Indian Penal Code (hereinafter referred to as 'I.P.C.' for short) against the present applicant.

3) The report was given by Assistant Police Inspector of Police Station Peth, District Beed against the present applicant and one Uttam Ovhal. He has made allegations that in C.R. No. 61/2015 registered with Peth Police Station for the offences punishable under sections 354(A)(D), 504 and 34 of I.P.C. and few sections of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act' for short) when they were making investigation and when they were present on the spot of offence for preparing spot panchanama, present applicant Archana was called there to act as a panch witness. She is working as Assistant Teacher. It is contended that at about 14.15 hours accused No. 1 Uttam Ovhal came there and he advised the present applicant not to work as panch witness by saying that unnecessarily she would face harassment. Due to this advise, the present applicant refused to act as a panch witness and as there was such refusal, denial for assisting Police Officer, F.I.R. was given.

4) This Court has carefully gone through the contents of

sections 186, 187 and 188 of I.P.C. At the most, denial to assist police can amount to offence punishable under section 187 of I.P.C. and for that punishment provided is imprisonment for one month or fine. This offence is non cognizable and bailable. As the offence is non cognizable as provided in section 190 of Cr.P.C., complaint could have been filed by public servant or the police could have taken permission of Magistrate to make investigation as provided in section 155 of Cr.P.C. This was not done and directly crime came to be registered on the basis of report given by police officer of aforesaid nature.

5) The record shows that on 11.7.2015 information was collected by Education Officer Primary against the present applicant, one more teacher by name Landge and Head Mistress of the school in connection with the present matter. There is also record to show that the present applicant had raised grievance before the Education Officer, Panchayat Samiti, Beed that there was no written instruction to her to act as a panch witness. She made allegations that the Head Mistress had taken her to police chowky without informing anything to her when she was discharging her duty, was teaching to class and after taking permission of Head Mistress she had returned to the school as there was no other teacher to take care of the students. It appears that she had some dispute with the Head Mistress. The learned counsel for applicant submitted that on 16.6.2011

instructions were issued by Home Department of the State Government and directions were given to see that services of teachers are not taken to act as a panch witness and ordinarily the panch witnesses should be used from public servants working in the Government departments.

6) Due to aforesaid circumstances, this Court holds that relief needs to be granted to the applicant. In the result, the application is allowed. Relief is granted in terms of prayer clause 'B' to the extent of applicant only.

Rule is made absolute in those terms.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

ssc/