

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

**CRIMINAL APPLICATION NO. 1046 OF 2018**

Ashok S/o. Laxman Wahadne,  
Age: 62 years, Occ: Advocate (APP),  
R/o. Kopargaon, Tq. Kopargaon,  
Dist. Ahmednagar.

... **APPLICANT**

**VERSUS**

1. The State of Maharashtra,  
Through its Police Station,  
Kopargaon.

2. Sau. Nanda W/o. Babam Galande,  
Age: 50 years, Occ.: Service (Police Constable,  
Police Station, Kopargaon),  
R/o. Jehur Patoda, Tq. Kopargaon,  
Dist: Ahmednagar.

... **RESPONDENTS**

...  
Mr. Kiran M. Nagarkar, Advocate for Applicant.

Mrs. V. S. Choudhari, APP for Respondent No.1 / State.

Mr. Amol S. Gandhim, Advocate for Respondent No.2.

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

DATE : 15<sup>th</sup> January, 2020.

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

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

2 The proceeding is filed for relief of quashing of FIR No.52 of 2018, registered with Kopargaon Police Station, District Ahmednagar, for the offences punishable under Sections 353, 354, 294, 504 and 509 of the Indian Penal Code. The FIR was given by Respondent No.2 on 29<sup>th</sup> March, 2018. This lady was deputed to work in the Court of Kopargaon, which is Sub Division of Sessions Court, Ahmednagar and she was holding the post of head constable. The present Applicant was working as Additional Public Prosecutor for that Court and he was using clerks room of Court as his office.

3 The incident took place on 27<sup>th</sup> March, 2018. On that day, according to the informant, when she entered the clerk room at 11:45 am, the Applicant came there and he started scolding her. As the informant said that it was open to him to contact the concerned police station, he made phone call to police station and on phone he informed to the officer working in the police station that the informant was not discharging the duty properly, she was collecting salary

without doing any work and she should not be sent to the Court. He also said that on many occasions, he had said so to police and so the police station need to send the P.I. to the Court. According to the informant, after having this conversation, the Applicant gave abuses to her in filthy language and then he held her hand and due to that she felt molested. It is her contention that she somehow rescued herself and when she was leaving, the Applicant said that she should not stay in the Court and if she stays in the Court he would give false report against her and he virtually pushed her outside of the room.

4           It is contention of the informant that after this incident, she went to Court No.2 of Shri Raghuwanshi and there she narrated the incident to court steno. It is her contention that as the Presiding Officer was on Dais, the steno asked her to wait for some time for expressing the grievance to the Presiding Officer. It is her contention that she narrated the incident to Police Naik, Sarita, who was court orderly. According to her, Sarita called other Public Prosecutors by name Gujar and Pangavhane and they narrated the incident to them. According to her, she then entered the chamber of another Presiding Officer, Court No.1 (Shri Shaikh). According to her, in the chamber of Presiding Officer, Shri Shaikh, she narrated the incident and at that time, the Presiding Officer of Court No.2, Shri Raghuwanshi was also

present there. At that time, Sarita informed that she had already contacted her superior officer and she had informed the incident. According to the complainant, on that day, she felt disturbed and so she did not give report to police. She gave report to police on 29<sup>th</sup> March, 2018 and then crime came to be registered for aforesaid offences.

5           The learned counsel for Applicant submitted that the delay caused is not explained in the FIR properly. He submitted that only to give counterblast to the reports made by the Applicant against the informant, false FIR is given. He produced on record photocopy of communication made with the P.I. of Kopargaon Police Station. It shows that on 27<sup>th</sup> March, 2018 itself, the Applicant had informed the incident to police and he had informed that the informant had come late to the office, at 12:45 pm and she was occupying the seat meant for Prosecutor. He had informed that when he asked the informant as to whether she had brought the papers in respect of bail matters, she said that she had no information about it. He informed in writing that after 12:45 pm, he contacted Kopargaon police and the PSO requested him to adjust things somehow on that day. He had informed that on that day, he had questioned the informant as to why she was sitting on his chair and upon that the informant had become

angry and she had said that she would falsely implicate him in a case and she had left. He had given report to Public Prosecutor, Ahmednagar in similar manner of the aforesaid incident on 27<sup>th</sup> March, 2018 itself. A copy of report was sent to the District Superintendent of Police and also Deputy Superintendent of Police, Shirdi.

6           The submissions made and record show that arrangement was made for sitting of the Prosecutors in clerk room. Some incident did take place, but different versions are given by the informant and the Applicant. The circumstance that FIR was given on 29<sup>th</sup> March, 2018, cannot be ignored in such cases. Indiscipline has spread everywhere. Many times the persons, who are not following the discipline make allegations against the officers, who try to bring discipline and scold. The police staff, which is deputed to work in Court, is expected to bring the record as required by the Prosecutors and the staff of police is also expected to give cooperation as the matters are to be argued only on the basis of record, which can be supplied by police. Many times there are interim reliefs granted and when the record is not produced and the matters are not argued, interim reliefs are continued by the Courts. In view of these circumstances, if the Additional Public Prosecutor scolded the informant on that day, it cannot be said that he ought not to have

scolded the informant. The aforesaid circumstances show that in the presence of informant, he had talked with police officer of her police station and he had reminded that in the past also he had made report against this lady. It appears that he did not want to see this lady constable on such duty as she was not observing the discipline and punctuality. On that day immediately after the incident, he gave reports to concerned, which are already quoted and so it does not look probable that some offence was committed by him and then he created such picture.

7           There are police statements of some persons like police constables and steno showing that after some time of the incident, this lady had informed to them that such incident had taken place. There was no witness to the incident and whatever happened, that happened inside of the clerk room. If the Applicant wanted to see that she was removed from such duty, there was no reason for him to hold her hand and molest her. In ordinary circumstances, he would not have done such thing and he would have orally warned or scolded her. It is clear that the lady wanted to avoid action, which could have been taken against her. There is clear probability that only out of that intention, such allegations are made against the Additional Public Prosecutor. Asking the Applicant to face the trial for such offence will

amount to misuse the process of law. The persons, who are not disciplined and who make such allegations when action for indiscipline is taken, would get encouraged if the officers are made to face trial on the basis of allegations of such persons.

8           The learned counsel for Applicant placed reliance on the observations made by the Apex Court in the case reported as 1996 AIR (SC) 309, (*Rupan Deol Bajaj: B.R. Bajaj Vs. Kanwar Pal Singh Gill: State of Punjab*). In this case, the Apex Court has laid down that the High Court is not expected to embark upon an enquiry as to the probability, reliability or genuineness of the allegations made in the FIR. It is observed that when there is sufficient material to take cognizance of offences punishable under Sections 354 and 509 of the Indian Penal Code, the Magistrate is expected to take cognizance of the same. The facts of that case were totally different. Some incident had taken place like slapping by the accused publicly. This incident was witnessed by many and so the facts were totally different. Allegations were of different nature. The conduct of the accused in that case was of different nature and incident of altogether different nature took place in the present matter. Thus, the observations of that case are of no help in the present matter to the informant. In the result, the following order is passed:

**ORDER**

- I. The application is allowed.
- II. Relief is granted in terms of prayer clause (B).
- III. Rule is made absolute in those terms.

[ M. G. SEWLIKAR, J. ]

[ T. V. NALAWADE, J. ]

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