

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1288 OF 2017

Ashish S/o Yuvraj Shinde,
Age : 21 years, Occ. : Service,
R/o. Bank Colony Nilanga,
Tq. Nilanga, Dist. Latur ... Petitioner

Vs.

1. The State of Maharashtra
2. Rameshwar S/o Dagdu Nilange,
Age : 30 years, Occ. Service,
R/o. Police Station, Nilanga,
Tq. Nilanga, Dist. Latur ... Respondents

...
Advocate for Petitioner : Shri Vikrant Valse h/f
Shri T. M. Venjane
APP for Respondent – State : Smt. Vaishali N. Patil Jadhav
...

**CORAM : T. V. NALAWADE &
B. U. DEBADWAR, JJ.**

DATE : 22nd JANUARY, 2021

ORAL JUDGMENT : [PER B. U. DEBADWAR, J.]

1. Rule. Rule made returnable forthwith. Heard both the sides, by consent, for final disposal.
2. This is a criminal writ petition for quashing of FIR bearing Crime No. 241 of 2017 registered at Nilanga Police Station, Latur, for the offences punishable under Sections 353 and 506 of the Indian Penal Code (hereinafter referred to as "IPC") .
3. Heard Shri Vikrant Valse, learned counsel holding for Shri T. M. Venjane, learned counsel for petitioner and Smt. Vaishali

N. Patil Jadhav, learned APP for State.

4. On 28-08-2017 at about 07:45 p.m. Shri Rameshwar Dagdu Nilange, attached to Nilanga Police Station, Dist. Latur, lodged the FIR at Nilanga Police Station, inter alia contending that on 28-08-2017 he was on patrolling duty during 08:00 a.m. to 02:00 p.m. Shri Aghav, ASI, Shri Shinde, Police Constable, Maske, Police Constable, were accompanied with him. They were moving in Nilanga town in a police Jeep, being driven by Police Hawaldar Shri Chame, to detect boys / youths who indulge in activities of taunting, insulting and troubling girls who are going to or coming from the college. While moving, at about 02:00 p.m., on the eastern side of the road leading to Anandamuni square from Shivaji Square, in front of main gate of Maharashtra Vidyalaya, they saw some boys standing in group. Accordingly, Jeep driver halted the Jeep, upon which Shri Rameshwar Dagdu Nilange and his staff got down from the jeep and asked boys to go inside the college and attain the classes, instead of standing near the entrance, if you are students. Upon saying so, some of the boys / youths left that place and gone away. However, applicant who was amongst those boys / youths did not move and stayed there. On asking him in loud voice, he said that "I will not move and I stay here only" and also said that "I would see you". Therefore, Shri Rameshwar Dagdu Nilange carried him to the Nilanga Police Station alleging that by his

act he obstructed him while discharging service as a police officer and lodged the report. On the basis of the said FIR, SHO on duty registered crime bearing No.241 of 2017 against the petitioner under Section 353 and 506 of IPC.

5. Learned counsel for petitioner vehemently argued that the petitioner is Shipai (PNR(GD)) in Indian Army attached to Commanding Officer 1840, Pioneer Unit-14. He was on leave from 18-08-2017 to 19-09-2017. During leave period he had been to his native place Nilanga. He wanted to purchase house property for his family members, and for that purpose he was moving in Nilanga town. On 28-08-2017 while passing from Maharashtra Vidyalaya, Nilanga, Suraj Satpute, who is his friend, met him. On request of Suraj he went to the tea stall situated in the vicinity of Maharashtra Vidyalaya for chitchatting and taking tea. Some college boys were also had come there for taking tea. At that time, first informant – Shri Rameshwar Dagdu Nilange, along with his staff, came there in a police Jeep and started beating college students. When the first informant Shri Rameshwar Dagdu Nilange asked him as to why he is standing there, he told him that he is Shipai in Indian Army and standing there with friend for taking tea. In spite of his giving explanation as to his presence in the vicinity of Maharashtra Vidyalaya, Shri Rameshwar Dagdu Nilange and his staff started beating him saying that you are a *tapori* college student and then

they carried the applicant along with his friend – Suraj to the police station for no reason and beat them. On petitioner's showing identity card, Shri Rameshwar Dagdu Nilange realised that he is a soldier in Indian Army. Learned counsel for petitioner further argued that Shri Rameshwar Dagdu Nilange, in spite of satisfying that petitioner is not a college student but a soldier in Indian Army, lodged false FIR against him, being annoyed by his act of not going away from the place where he was standing with his friend, like many other college students, in pursuance of the directions given by him. Petitioner had not at all assaulted or used criminal force to deter Shri Rameshwar Dagdu Nilange or his staff members who were on duty, therefore, no case under Section 353 of IPC makes out. Also, there is no whisper in FIR about threatening the informant Shri Rameshwar Dagdu Nilange, therefore, Section 506 cannot be said to be attracted. Hence, the FIR lodged by Shri Rameshwar Dagdu Nilange, is liable to be quashed.

6. Per contra, learned APP submitted that applicant was found near the college when there were many girls, either proceeding towards college or leaving the college. The special squad was constituted to safeguard college girls from the menace of *tapori* youths. By not obeying the order given by Shri Rameshwar Dagdu Nilange, applicant caused interference in the execution of duty of police inspector. The contents of FIR makes out prima facie

case under Section 353 of IPC. Therefore, the petition is liable to be rejected.

7. In the light of aforesaid submissions made at bar, we have carefully gone through the contents of FIR narrated above and Sections 350, 351 and 353 of IPC, which read as under :-

“350. Criminal force —

Whoever intentionally uses force to any person, without that person’s consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

351. Assault —

Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation —

Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

353. Assault or criminal force to deter public servant from discharge of his duty —

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Classification Of Offence - The offence under this section is cognizable, non-bailable, non-compoundable and triable by any Magistrate.

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to the State of Maharashtra, in Section 353, for the words "two years", substitute "five years". - Maharashtra Act 40 of 2018, Section 3.
 Classification of Offence – In Maharashtra, the offence under this section is cognizable, non-bailable and triable by Court of Session."

8. In case at hand, from the papers annexed to the petition, it is clear enough that petitioner, in relevant period, was serving in Indian Army and 1840 Pioneer Unit, which is at high altitude area Leh (Jammu and Kashmir). Copy of service certificate (Exhibit-A) not only demonstrates his date of joining in Indian Army and date of retirement but also demonstrates his present and permanent residential address. Leave certificate makes it clear that on 18-08-2017 he was granted 30 days casual leave for visiting his native place at Dapka, Tq. Nilanga, Dist. Latur. Both the aforesaid certificates have been issued by Second Command for Office Commanding 1840 PNR Unit. Once it is clear that in relevant period petitioner was not college student but the soldier in Indian Army, there cannot be a possibility of his indulging in activities of teasing, taunting and troubling school / college going girls. Admittedly, nobody had made such type of complaint against the petitioner. For making out the case, falling under Section 353 of IPC, it is necessary that one should either use criminal force or assault to a person being a public servant in execution of his duty as such public servant or with intent to prevent or deter that person from

discharging his duty as such public servant. In this case, FIR not at all says that petitioner either used criminal force or assaulted to Shri Rameshwar Dagdu Nilange, or any one from his staff members, while they were discharging their duty or prevented them from discharging their duty. The act of petitioner as mentioned in the FIR that he did not leave the place where he was standing, cannot be said to be obstruction in execution of duty of PSI and, as such, he gave his identification and disclosed the purpose for which he was standing in the vicinity of Maharashtra Vidyalaya. In such circumstances, it will not be legal and proper to make the petitioner to suffer agony of facing trial without there being any fault on his part. With this, we hold that the impugned FIR is liable to be quashed as it does not constitute any prima facie case under Sections 353, 506 of IPC.

9. Hence, we pass the following order :-

ORDER

1. Petition is allowed.
2. Relief is granted in terms of prayer clause 'B'.
3. Rule made absolute in aforesaid term.

(B. U. DEBADWAR, J.)

(T. V. NALAWADE, J.)