



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.931 OF 2023



Age-51 years, Occu:Service  
as Superintendent Engineer (MSEDCL),  
R/o-Superintendent Engineer Rural Circle,  
Near Garware Stadium, MSEDCL,  
Aurangabad MIDC, CIDCO,  
Aurangabad, Maharashtra 431006.

...APPLICANT

VERSUS

1) The State of Maharashtra,  
Through Police Inspector,  
M.I.D.C., CIDCO Police Station,  
Aurangabad City,

2) X Y Z

...RESPONDENTS

...  
Mr. A.S. Bajaj Advocate for Applicant.  
Mr. V.K. Kotecha, A.P.P. for Respondent No.1.  
Mr. S.V. Kulkarni Advocate for Respondent No.2.

...

CORAM: SMT. VIBHA KANKANWADI AND  
S.G. CHAPALGAONKAR, JJ.

DATE OF RESERVING JUDGMENT : 12<sup>th</sup> SEPTEMBER 2024

DATE OF PRONOUNCING JUDGMENT : 9<sup>th</sup> OCTOBER 2024

**JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :**

1. Heard finally with the consent of the learned Advocates for the rival parties.
2. Present Application has been filed under Section 482 of the Code of Criminal Procedure by the original accused. Initially, it was for quashing the First Information Report (for short "the FIR") vide Crime No.303 of 2022 registered with M.I.D.C., CIDCO Police Station, Aurangabad and by way of amendment, for quashing the charge-sheet and the proceedings in R.C.C. No.544 of 2023 pending before the learned Judicial Magistrate, First Class, Aurangabad for the offence punishable under Section 509 of the Indian Penal Code.
3. Heard learned Advocate Mr. Bajaj for the applicant, learned APP Mr. Kotecha for respondent No.1 - State and learned Advocate Mr. Kulkarni for respondent No.2.
4. It has been vehemently submitted on behalf of the applicant that the applicant was the senior of respondent No.2 - informant. Respondent No.2 was working as Executive Engineer, whereas the applicant was the Superintendent Engineer.

Certainly it is expected that respondent No.2 would have been required to go to the cabin / chamber of the applicant relating to the official work. But then she alleges that in January 2022 the applicant had kept a paperweight made of steel and in the shape of a naked lady, on his table and applicant used to touch the said paperweight when respondent No.2 used to go in his cabin. She also states that she has discussed the said fact to other female employees who were also experiencing the same. Thereupon, respondent No.2 states that the act on the part of the applicant was amounting to outraging her modesty. The other lady employees in the office were not in a position to file complaint against the applicant, however, ultimately respondent No.2 has filed it. In fact respondent No.2 has suppressed many facts in the FIR. She had made complaint with the Vishakha Committee of the office and the behaviour of respondent No.2 has been taken note of by the Committee. During the course of that inquiry, statements of the employees have been recorded, who have not supported respondent No.2. Therefore, the Committee had come to the conclusion that the informant had failed to place evidence in respect of sexual harassment at the workplace. The said decision was taken by the Committee on 3<sup>rd</sup> August 2022 and the FIR is then lodged on 21<sup>st</sup> August 2022. As per the FIR,

the alleged acts were done between 1<sup>st</sup> January 2022 to 28<sup>th</sup> February 2022. No FIR was registered immediately thereafter but respondent No.2 waited for the decision by the Vishakha Committee and then when it went against her, with ulterior motive, she has filed the FIR. During the course of the said inquiry and also it can be demonstrated that there was in fact dispute between respondent No.2 and one Mrs. XXXXXXXXXX who was serving as Deputy Engineer. She had given complaint against respondent No.2 to the applicant on 23<sup>rd</sup> February 2022. The other employees were also making complaints about behaviour of respondent No.2 with them and therefore, being the senior officer, the applicant was required to take actions and make reports. This will not amount to offence under Section 509 of the Indian Penal Code. Further, if we consider the photographs of the statue that is seized from the table of the applicant, then it can be seen that it cannot be said that it is of a lady. Therefore, it cannot be said that there was any kind of intention to insult the modesty of respondent No.2. It would be unjust to ask the applicant to face the trial, under such circumstance.

5. The learned APP strongly opposes the Application and submits that since the charge-sheet is filed, let the applicant

face the trial.

6. Learned Advocate for respondent No.2 relies on the affidavit of respondent No.2 wherein there is reiteration of the contents of the FIR by respondent No.2. Rather, more details are given in the affidavit-in-reply which are not forming part of the FIR. Even with the dates those incidences are quoted. It is submitted on behalf of respondent No.2 that the act on the part of the applicant in moving the hand from the said paperweight amounted to outraging the modesty of the woman. When respondent No.2 is serving, she knows what are the limitations and how she should behave. The applicant though senior to respondent No.2, was not supposed to act in such a way and therefore, let him face the trial.

7. The first and foremost fact to be noted is that the present Application has been filed under Section 482 of the Code of Criminal Procedure, where the powers of this Court to consider the material, are in a way restricted. This Court is not supposed to go into the appreciation of evidence/material which is collected during the course of the investigation. However, certainly, if this Court comes to the conclusion that there is no such material which can be said to be attracting the ingredients

of the offence, then this Court must exercise its powers under Section 482 of the Code of Criminal Procedure.

8. Perusal of the FIR would show that the informant had made complaints against the applicant to the higher authorities, but then she says that she has not got justice. We are afraid that only the orders in favour of the informant cannot be the justice. There is mention about the matter taken before the internal Committee i.e. Vishakha Committee, but it has been only stated that she did not get justice. The fact remains is that during the course of the investigation the copy of the decision taken by the Committee in respect of the complaint by respondent No.2 has been collected. There appears to be statements of three witnesses in the charge-sheet. One is [REDACTED], who has stated that when he had gone to the cabin of the applicant, he had also seen the said statue. Merely observance of the said statue by witness Adwait will not be helpful to the prosecution to prove the offence under Section 509 of the Indian Penal Code, because the applicant is not disputing that such paperweight was on his table. Another statement under Section 161 of the Code of Criminal Procedure is that of the husband of the informant, who was admittedly not present at the time of alleged incident. Third statement is of one Bhujang Khandare, which does not

support the prosecution. Though in the *Ferist*, particulars about statements of two more witnesses are not mentioned, but it appears that those statements are made part of the charge-sheet. Those are of two lady employees. However, they are also not supporting the prosecution, rather they say that they had not felt that their modesty is insulted because of the said paperweight. Importance is required to be given to these statements, because they are by the lady employees and according to them they had not felt bad even after witnessing the said paperweight.

9. Now, it is stated by the informant that the applicant used to move his hands on the paperweight in such a fashion that it caused insult to her modesty. If we consider the photographs of the said statue, then we cannot say that it is of a particular gender. Further, the panchnama, at the time of seizure of that article, also does not say that it could be identified from the said paperweight that it is a statue of a nude lady.

10. One of the principle on which this Court can exercise its powers under Section 482 of the Code of Criminal Procedure; as per *State of Haryana and others vs. Ch. Bhajanlal and others*, AIR 1992 SC 604, is that if the FIR has been lodged with ulterior

motive then it can be quashed and set aside. The copy of the order passed by the Vishakha Committee is brought on record and it appears that by giving full opportunity, the Committee had come to the conclusion that there are no acts of sexual harassment at the workplace. Therefore, when such documents are available, then certainly this Court can exercise its powers for quashing the FIR. It appears that respondent No.2 wanted to settle the personal score. There is delay in lodging the FIR. The action by Vishakha Committee was independent. The informant ought not to have waited for the outcome of the decision by the Committee.

11. With the said material on record, it would be a futile exercise to ask the applicant to face the trial and therefore, when the case is squarely covered under the principles laid down in *State of Haryana and others vs. Ch. Bhajanlal and others*, (supra), the Application deserves to be allowed. Hence the following order:-

#### **ORDER**

(I) The Application stands allowed.

(II) The proceedings in R.C.C. No.544 of 2023 pending before the learned Judicial Magistrate,



First Class, Aurangabad against the applicant arising out of the First Information Report vide Crime No.303 of 2022 registered with M.I.D.C., CIDCO Police Station, Aurangabad for the offence punishable under Section 509 of the Indian Penal Code, stands quashed and set aside.

**[S.G. CHAPALGAONKAR]**  
**JUDGE**

**[SMT. VIBHA KANKANWADI]**  
**JUDGE**

asb/OCT24