

a (iii) Pending the appeal, the applicant/accused should not contact the first informant, or any other witness, or any member of the victim's family in any manner.

b (iv) The applicant's failure to abide by these conditions shall entail the prosecution to apply for cancellation of bail now granted to the applicant/accused.

(v) Application is accordingly disposed of.

Result:- Application allowed.

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ABC 2019 (III) 59 BOM
ACQUITTAL & BAIL CASES
HIGH COURT OF BOMBAY
(T.V. Nalawade & K. K. Sonawane, JJ.)
Criminal Application No 3479 of 2018
Decided on 6 June, 2019
Aurangabad Bench

DILIP UTTAM LOMATE

- Applicant(s).

Versus

e STATE OF MAHARASHTRA & ANR.

- Respondent(s).

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Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 482 – Quashing of FIR – Indian Penal Code, 1860 – Section 354 – complaint under – Touching the hands of subordinate teacher by head-master – Complaints against the complainant in regard to insubordination, negligent conduct & demeanor while discharging the duties – adverse report lodged by applicant to the superior against complainant – No use of criminal force or assault – no culpable intention on the part of accused to commit the offence of outraging her modesty – no circumstances, sufficient to conceive that the act of touching the hands of complainant had anything to do with the sex of the victim which is the essence of woman's modesty – Held, the FIR is an placebo device to lull the inquiry initiated against her for dereliction of duties – such kind of activities during the course of employment should not be allowed to be developed & promoted – FIR quashed. (Para 12 & 13)

(B) Indian Evidence Act, 1872 – Section 3 – Relevant fact – Outraging modesty of a woman – Culpable intention – The head master touched hands of assistant teacher in the classroom – Held, Had there been any culpable intention of the applicant to commit

offence of outrage of modesty of the employee of School— he would have an opportunity to call the complainant in his chamber— Indian Penal Code, 1860 – Section 354. (Para 12) a

Facts:- A per the facts of the case, the applicant was employed as an Headmaster in the educational institution and the respondent No.2 was also attached to the said school as Assistant Teacher. It was alleged that the medical bill of the respondent and her leave allowances bill were pending before the school authority. According to prosecution, on the relevant day in the morning hours, the respondent No.2 was busy in teaching the students. Suddenly the applicant appeared in the class-room. He came near her and after touching her hands, disclosed that her pending bills will be made cleared. The respondent No.2 made endeavour keep distance from the applicant. But, he again touched her folded hands and by pressing it gave threats that his relatives are on higher posts and no one else caused harm to him. The respondent No.2 narrated the incident to her associate teacher and eventually, filed the report to the police. A case was registered u/s 354 of IPC and the penal law was set in motion. The present application for quashing the FIR was filed before the honourable Bombay High Court, which was allowed. b
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Held:- The intense scrutiny of the factual score reflects that there was no use of criminal force or assault by the applicant-Headmaster to the respondent No.2 - Assistant Teacher at the time of alleged incident. The bare act of touching the hands of fellow woman-teacher by Headmaster while uttering words that her bills would be made cleared and she should not make complaint to Trustees of the School, would not itself sufficient to constitute the offence of outraging the modesty of respondent No.2 - complainant. It cannot be said that the alleged act of molestation by the applicant was not only an affront to the normal sense of feminine decency and to the dignity of the complainant lady. As referred above, relation of the applicant and respondent No.2 complainant was the Headmaster and the Assistant Teacher. It would unsafe to conceive that there was a culpable intention of the applicant Headmaster to outrage the modesty of fellow Assistant Teacher of the Ashram School by touching to her hand. Had there been any culpable intention of the applicant to commit offence of outrage of modesty of the employee of School, he would have an opportunity to call the respondent No.2 - complainant in his chamber in the Ashram School. But, the applicant-Headmaster visited the complainant in the class room and requested her not to make any complaint against him to the Trustee and he would get her bill cleared. It is to be seen that during the course of e
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a conversation the applicant touched the hands of one of the fellow teacher of the School. It can not be termed as deliberate act on the part of applicant for outraging the modesty of respondent No.2-complainant. It would hard to believe that there was an ill-intention of the applicant- Headmaster to commit such kind of offence or he had an knowledge that his act would outrage the modesty of respondent No.2- complainant. In view of departmental action initiated against respondent No.2-complainant, it seems that the present FIR is an placebo device to lull the inquiry initiated against her for dereliction of duties in the Ashram School. It is worthy to note that, such kind of activities during the course of employment should not be allowed to be developed and promoted. (Para-12)

d The factual score of the episode of allegation of indecent behaviour of the applicant- Headmaster, *prima facie*, reflects that there was no culpable intention on the part of applicant-accused while touching the hands of respondent No.2 Teacher to commit the offence of outraging her modesty. The alleged crime does not meet the criteria of Section 354 of IPC, as there are no circumstances, *prima facie*, sufficient to conceive that the act of touching the hands of respondent No.2-complainant had anything to do with the sex of the victim which is the essence of woman's modesty. (Para-13)

Counsel:- For Applicant(s): Mr. S. J. Salunke, Adv.

For Respondent(s): Mr. D. R. Kale, S. S. Choudhari, Advs.

Cases Referred:-

- f 1. *Madhavrao Jiwaji Rao Schindia and another Vs. Sambhajirao Chandrojirao Angre and others, etc., AIR 1988 SC 709, (Para-14)*
 2. *State of Haryana and others Vs. Ch. Bhajan Lal and others, MANU/SC/0115/1992 : 1991(1) RCR(Cri), 383 (SC), (Para-15)*

g **JUDGMENT**

K.K.SONWANE, J.: - 1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for parties at admission stage.

h 2. The applicant moved the present application under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for the relief to quash and set aside the First Information Report (FIR) bearing Crime No. 168 of 2018 registered under Section 354 of the Indian Penal Code (IPC) with the Bembali Police Station, District Osmanabad as well as the criminal proceeding initiated on the basis of aforesaid FIR bearing Regular Criminal Case No. 142 of 2019 (The State Versus Dilip)

pending before the learned Judicial Magistrate, First Class, Osmanabad.

3. Precisely stated the facts of the case are that the applicant was employed as an Headmaster in the educational institution known as "Shri. Sant Dnyaneshwar Prathmik Ashram School", at village Umregavhan, Taluka and District Osmanabad. The respondent No.2 Smt. Vaishali Umakantrao Patil was also attached to the said Ashram School as Assistant Teacher since year 2004. There were in all 229 students studying in the school from I st standard to VIIth standard. It has been alleged that the medical bill of the respondent - Smt. Vaishali Patil and her leave allowances bill for the period 2015 and 2016 were pending before the school authority.

4. According to prosecution, on 26-09-2018, in the morning hours, the respondent No.2 Smt. Vaishali Patil was busy in the class room of Ist standard for teaching the students. Suddenly, at about 11.00 a.m. the applicant - Headmaster Shri. Lomate appeared in the class-room. He came near the respondent - Smt. Vaishali Patil and after touching her hands, disclosed that her pending bills will be made cleared. He requested the respondent not to make his complaint to the Trustees of the School. The respondent No.2 Assistant Teacher Smt. Vaishali Patil made endeavour keep distance from the applicant-Headmaster. But, he again touched her folded hands and by pressing it gave threats that his relatives are on higher posts and no one else caused harm to him. The respondent No.2 - complainant narrated the incident to her associate teacher Shri. Jadhav and Auti from the school. Eventually, on 12-10-2018, the respondent No.2 filed the report to the police for penal action against the applicant - Head Master. Pursuant to report of respondent No.2 - Smt. Vaishali Patil, the police of Bembali Police Station, District Osmanabad, registered the Crime No. 168 of 2018, under Section 354 of IPC and set the penal law in motion against the present applicant.

5. Pending the investigation, applicant, invoking remedy under Section 482 of Cr.P.C., preferred the present application to exonerate from the charges pitted against him. During the course of hearing of the present application, it has been informed to this Court that after due investigation, the final report under Section 173 of Cr.P.C. i.e. chargesheet has been filed by the Investigating Officer vide RCC No. 147 of 2019 and it is pending for adjudication on merit before the learned Magistrate at Osmanabad.

6. The learned counsel for the applicant vehemently submitted that the entire allegations about the attempt of applicant to outrage the modesty of respondent No.2 - complainant, all are false, baseless and vexatious one. There was inordinate delay in lodging the FIR. According to learned counsel for the applicant, the respondent No.2 was negligent while discharging her duties in the school. She has an habit of insubordination. She always remained absent in the school without prior intimation and without any application for leave. She ventured to put her signature on the muster roll subsequently without permission of the higher authority. There was an occasion to issue memo to the complainant for her negligent conduct and demeanor in the school. The Divisional Deputy Commissioner, Social Welfare Department was appraised about frequent absence of complainant on duties without prior intimation. The applicant being Head Master of the School used to give understanding to the respondent No. 2 - complainant for proper behaviour. But, he received threats from the respondent No.2- complainant for lodging criminal case of sexual harassment against him. The Assistant Commissioner, Social Welfare Department, Osmanabad also directed to initiate enquiry of dereliction while discharging duties against the respondent No.2-complainant. The letter issued by the Deputy Commissioner dated 29-06-2016 addressed to Assistant Commissioner, Social Welfare Department is produced on record. The learned counsel for applicant fervidly contends that the present FIR was filed with ulterior motive to harass the applicant. The allegations made in the FIR are imaginary, vexatious and fabricated one for pressure tactics to deter the applicant - Headmaster from taking adverse action against respondent No.2-complainant.

7. The learned APP and learned counsel Shri. S. S. Choudhari appearing for respondent No.2 - complainant raised objections to the contentions propounded on behalf of applicant and submits that the allegations in the FIR lodged against the applicant categorically reflects that the applicant committed offence of outraging the modesty of complainant. He caught hold the hands of complainant and pressed it with ill-intention. According to learned counsel for respondent No. 2 - complainant, the allegations nurtured on behalf of complainant constitute offence under Section 354 of IPC and no interference is warranted.

8. Having given anxious consideration to the rival submissions on behalf of both sides as well as factual score of the matter, we find

force in the argument advanced on behalf of applicant- Headmaster. It is not in dispute that pursuant to FIR of the respondent No.2-complainant, the penal proceeding under Section 354 of IPC has been initiated against the applicant on the accusation that the applicant attempted to outrage the modesty of the respondent No.2-complainant. The penal proceeding under Section 354 of IPC would be read as under -

"Section 354 - Assault or criminal force to woman with intent to outrage her modesty -

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine."

9. The aforesaid provision of Section 354 of IPC has been enacted to safeguard the public morality and decent behaviour. Therefore, if any person uses criminal force upon any woman with intention or knowledge that the woman's modesty will be outraged, he is to be penalized. In order to constitute the offence under Section 354 of IPC, mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of such outrage alone for its object. It is a rule of law that, while dealing with the cases of allegation of outrage of modesty, the Court should adopt a careful approach and offence can not be treated as trivial. The intention of the offender is not the sole criteria for the offence under Section 354 of IPC and it can be committed by a person assaulting or using criminal force to any women if he knows that by such act the modesty of the woman is likely to be affected. The existence of intention or knowledge has to be culled out from various circumstances under which the alleged offence is shown committed. Undisputedly, the essence of a woman's modesty is her sex. The culpable intention of the accused would be the crux of the matter. The act of the offender should be of such a nature that it was not only an affront to the normal sense of feminine decency, but also an affront to the dignity of the lady. The modesty is the virtue which attaches to female owing to her sex.

10. In the matter in hand, it is not in dispute that the applicant at the time of alleged incident, was employed as an Headmaster in the Ashram School. The respondent No.2-complainant was also attached

a to the same Ashram School since year 2004 as Assistant Teacher. It has been alleged that her medical bills of the year 2011 and leave allowance bills for the year 2015-16 were kept pending for approval from the superior authority. The respondent No.2-complainant requested, time and again, to the applicant- Headmaster for payment of both pending bills, but, her efforts found unavailing. According to b prosecution, on the day of incident, at about 11.00 a.m. the applicant-Headmaster appeared in the class-room of respondent No.2-complainant. The applicant touched her hand and disclosed that he would clear her entire bills, but she should not make his complaint to Trustees of the School. The respondent No.2 - complainant further c cast aspersion that she attempted to maintain distance from the applicant-accused. But, he again touched her hands and gave threats that his relatives are on high post and nobody would cause harm to him. The complainant, while tendering apology folded her hands, d but, the applicant-accused pressed her hands and went away. It has been alleged that the applicant-Headmaster attempted to outrage the modesty of respondent No.2- complainant Assistant Teacher in her class room by touching and pressing her hands with ill-intention.

e 11. At this juncture, it is to be noted that there were complaints against the respondent No.2-complainant in regard to insubordination, her negligent conduct and demeanor while discharging the duties at the Ashram School, etc. There were allegations about mischief played by respondent No.2 - complainant by putting her signature on the muster roll without grant of leave. The voluminous f documents produced on record in regard to the adverse report lodged by applicant- Headmaster to the superior against respondent No.2-Assistant Teacher for dereliction of duty. The Regional Deputy Commissioner Welfare Department given direction to the Assistant Commissioner to initiate inquiry about the mischief played by the g respondent No.2- complainant following complaint by the applicant-Headmaster. According to applicant-Headmaster, the respondent No.2 - complainant, taking umbrage of adverse action filed false complaint against applicant by making allegation of outrage of her h modesty while discharging duty in the Ashram School.

12. The intense scrutiny of the factual score reflects that there was no use of criminal force or assault by the applicant-Headmaster to the respondent No.2 - Assistant Teacher at the time of alleged incident. The bare act of touching the hands of fellow woman-teacher by Headmaster while uttering words that her bills would be made

cleared and she should not make complaint to Trustees of the School, would not itself sufficient to constitute the offence of outraging the modesty of respondent No.2 - complainant. It cannot be said that the alleged act of molestation by the applicant was not only an affront to the normal sense of feminine decency and to the dignity of the complainant lady. As referred above, relation of the applicant and respondent No.2 complainant was the Headmaster and the Assistant Teacher. It would unsafe to conceive that there was a culpable intention of the applicant Headmaster to outrage the modesty of fellow Assistant Teacher of the Ashram School by touching to her hand. Had there been any culpable intention of the applicant to commit offence of outrage of modesty of the employee of School, he would have an opportunity to call the respondent No.2 - complainant in his chamber in the Ashram School. But, the applicant- Headmaster visited the complainant in the class room and requested her not to make any complaint against him to the Trustee and he would get her bill cleared. It is to be seen that during the course of conversation the applicant touched the hands of one of the fellow teacher of the School. It can not be termed as deliberate act on the part of applicant for outraging the modesty of respondent No.2- complainant. It would hard to believe that there was an ill-intention of the applicant-Headmaster to commit such kind of offence or he had an knowledge that his act would outrage the modesty of respondent No.2-complainant. In view of departmental action initiated against respondent No.2-complainant, it seems that the present FIR is an placebo device to lull the inquiry initiated against her for dereliction of duties in the Ashram School. It is worthy to note that, such kind of activities during the course of employment should not be allowed to be developed and promoted.

13. The factual score of the episode of allegation of indecent behaviour of the applicant- Headmaster, *prima facie*, reflects that there was no culpable intention on the part of applicant-accused while touching the hands of respondent No.2 Teacher to commit the offence of outraging her modesty. The alleged crime does not meet the criteria of Section 354 of IPC, as there are no circumstances, *prima facie*, sufficient to conceive that the act of touching the hands of respondent No.2-complainant had anything to do with the sex of the victim which is the essence of woman's modesty.

14. Now, the question that arises, whether the crime registered against the applicant can be quashed and set aside by exercising powers

a under Section 482 of Cr.P.C. It is worth to mention that the Honourable Apex Court in the case of *Madhavrao Jiwaji Rao Schindia and another Vs. Sambhajirao Chandrojirao Angre and others, etc.* reported in AIR 1988 SC 709, categorically elucidated in paragraph No. 7 as under:

b "7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

c 15. The Honourable Apex Court in the case of *State of Haryana and others Vs. Ch. Bhajan Lal and others* reported in *MANU/SC/0115/1992 : 1991(1) RCR(Cri), 383 (SC)* held that "*where the proceedings is instituted with an ulterior motive or were the allegations made in the complaint are absurd and improbable, the Court would be within its power to quash the complaint/FIR*". Moreover, if the allegations in the FIR against the applicants are taken at their face value and accepted the same in its entirety would not constitute any offence or make out case against applicants, in such circumstances, there would not be any propriety to allow the prosecution to proceed further into the matter.

f 16. In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicant. It would be an futile efforts and it would cause injustice and prejudice to applicant. It would also dissipate the precious time of Court of law as the possibility of ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicant may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against the applicant deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

1. The Criminal Application stands allowed.

2. The FIR bearing Crime No. 168 of 2018 dated 12-10-2018 for the offence punishable under Section 354 of IPC registered with Bembali Police Station, District Osmanabad, as well as chargesheet filed by respondent No.1 - State for the alleged offence under Section 354 of IPC vide RCC No. 142 of 2019 (*State of Maharashtra Versus Dilip Uttam Lomate*) initiated pursuant to aforesaid FIR, pending before the learned Judicial Magistrate, First Class, Osmanabad, is ordered to be quashed and set aside. The applicant is exonerated from the charge pitted against him.

3. Rule is made absolute in terms of prayer clause "C and C-1".

4. Criminal Application is disposed of in above terms.

5. No order as to costs.

Result:- Criminal Application allowed.

**ABC 2019 (III) 68 BOM
ACQUITTAL & BAIL CASES
HIGH COURT OF BOMBAY**

(V.K. Jadhav, J.)

Criminal Revision Application No. 74 of 2005

Decided on 3 June, 2019

Aurangabad Bench

ABDUL GAFAR S/o MOHAMMAD IBRAHIM - Applicant(s).

Versus

STATE OF MAHARASHTRA - Respondent(s).

Law Covered:- (A) *Prevention of Food Adulteration Act, 1954 – Section 16 (1)(a) (i) Prevention of Food Adulteration Rules, 1955 – Rule 29 – Conviction under – 12 packets purchased by Food Inspector – divided the total quantity into three parts – had not divided each & every packet into three parts – non compliance of Sec. 11 – submission of report by the public analyst beyond the prescribed period of 40 days – Acquittal. (Para 9 & 11)*

(B) *Prevention of Food Adulteration Rules, 1955 – Rule 7 sub-rule 3 – Requirement under – it is incumbent upon the public analyst to submit the report of analysis in Form No.III within a period of 40 days from the date of receipt of sample. (Para 11)*

(C) *Prevention of Food Adulteration Rules, 1955 – Rule 29 – Application of – "Toast", which is a bakery product, cannot be said to*