

OA.No.170/00673/2018/CAT/BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00673/2018

DATED THIS THE 14TH DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Sri Gurudas S. Fayde,
S/o Subraya Fayde,
Aged about 40 years,
Occu: Ex-Fireman, Naval Base,
R/o Devalamakki Village,
Karwar Taluk,
Uttara Kannada District 581 308
(By Advocate Shri V.P. Kulkarni)

..... Applicant

Vs.

1. Union of India,
Represented by its Secretary,
Department of Defense,
Raksha Bhavan,
New Delhi

2. Flag Officer,
Commander-in-Chief,
Headquarters (CCPO),
Western Naval Command,
Mumbai 400 023

3. Commander Sr. Staff Officer (Civil)
Headquarters, Karnataka Naval Area,
Naval Base, Karwar,
Uttara Kannada District 581 308

4. Chief Administrative Officer,
Common Civilian Labour Officer,
For Chief Staff Officer (Labour & Administration)

....Respondents

(By Shri K. Dilip Kumar, Counsel for Respondent No. 1 to 4)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The matter is in a very small compass. An allegation is made that applicant had wilfully suppressed material facts when undertaking that there is no criminal case pending against him. In fact, a criminal case was initiated against him as he was a member of a government school committee who prevented a person and his wife from encroaching into the government property. Apparently a case and a counter case resulted and the wife of the original complainant had filed a case against the applicant that he had committed an offence coming under Section 323, 324 and 354 of IPC by holding her hand to prevent her from digging a trench inside the property. This matter was taken up by the Additional JMFC, Karwar in Criminal Case No. 178/2017 and was disposed off vide order dated 10.01.2019 which we quote:

"J U D G M E N T"

The P.S.I. of Mallapur Police Station filed charge sheet against the accused in view of Cri.No.42/2014 for the offences punishable u/Sec.323, 324 and 354 of IPC.

2. The brief facts of the prosecution case are as under:

On 15.10.2014 at about 10.45 a.m. within the working jurisdiction of Mallapur Police station, inside the compound wall of Government Higher Primary School which is situated at Devalmakki village, C.W.1, C.W.4 to C.W.8 are doing water channel work under Udyoga Khatri Yojana of Devalmakki Gram Panchayat, accused went to the spot and questioned the C.W.1 that why you are doing water channel work in the middle of the playground and also accused pulled the C.W.1 by holding her hand and tried to outrage the modesty of C.W.1. It is also further case of the prosecution that accused pulled the C.W.1 and voluntarily caused simple injuries to C.W.1. It is also further case of the prosecution that C.W.8 being the husband of C.W.1 went to the spot at that time accused assaulted the C.W.8 by plastic basket and voluntarily caused simple injuries to C.W.8, thereby accused committed an offences punishable u/Sec.323, 324 and 354 of IPC.

3. After filing the charge sheet, the cognizance of the offences punishable u/Sec.323, 324 and 354 of IPC is taken and order to register the case and issue summons to accused person. In view of summons, accused person appeared before this Court and he was released on Court bail. The copies of charge sheet and other prosecution papers have come to be furnished to the accused person as contemplated u/Sec.207 of Cr.P.C. Heard the accused before framing the charge. The charge has been framed after hearing on both sides. The contents of charge have been read over and explained to the accused person in Kannada language. On being understood the contents of charge, the accused person pleaded not guilty and claims to be tried. Hence, the case is posted for evidence on prosecution side.

4. In order to bring home guilt of the accused person, the prosecution has examined eleven witnesses as P.W.1 to P.W.11 out of 12 witnesses cited in the charge sheet. Apart from the oral testimony of P.W.1 to P.W.11, the prosecution has got marked Ex.P.1 to Ex.P.7, M.O.1 and M.O.2 and closed its side.

5. The statement of the accused person is recorded as contemplated u/Sec.313 of Cr.P.C by putting questions relating to incriminating circumstances which were found against the accused person during the course of evidence of P.W.1 to P.W.11. The plea of accused is one of total denial. He negativeated all those incriminating circumstances narrated by P.W.1 to P.W.11. On the other hand, accused has submitted that, there is no any defence evidence. Hence, case is posted for arguments.

6. Heard the arguments. Perused the materials available on record.

7. In view of above facts, the following points would arise for my consideration:

POINTS

1. Whether the prosecution proves beyond all reasonable doubt that, on 15.10.2014 at about 10.45 a.m. within the working jurisdiction of Mallapur Police station, inside the compound wall of Government Higher Primary School which is situated at Devalmakki village, C.W.1, C.W.4 to C.W.8 are doing water channel work under Udyoga Khatri Yojana of Devalmakki Gram Panchayat, accused went to the spot and questioned the C.W.1 that why you are doing water channel work in the middle of the playground and also accused pulled the C.W.1 by holding her hand and tried to outrage the modesty of C.W.1, thereby accused committed an offence punishable u/Sec.354 of IPC?

2. Whether the prosecution proves beyond all reasonable doubt that, on same date, time and place, accused pulled the C.W.1 and voluntarily caused simple injuries to C.W.1, thereby accused committed an offence punishable u/Sec.323 of IPC?

3. Whether the prosecution proves beyond all reasonable doubt that, on same date, time and place, C.W.8 being the husband of C.W.1 went to the spot at that time accused assaulted the C.W.8 by plastic basket and voluntarily caused simple injuries to C.W.8, thereby accused committed an offence punishable u/Sec.324 of IPC?

4. What order?

8. My answer to the above said points are as follows:

Point No.1: In the Negative.

Point No.2: In the Negative.

Point No.3: In the Negative.

Point No.4: As per final order, for the following

-: R E A S O N S :-

9. **POINT NO.1 TO 3:** These points are inter-related with each other. So, in order to avoid repetition of the facts and circumstances, I have taken these three points for common discussions and consideration. It is the specific case of the prosecution that, on 15.10.2014 at about 10.45 a.m. within the working jurisdiction of Mallapur Police station, inside the compound wall of Government Higher Primary School which is situated at Devalmakki village, C.W.1, C.W.4 to C.W.8 are doing water channel work under Udyoga Khatri Yojana of Devalmakki Gram Panchayat, accused went to the spot and questioned the C.W.1 that why you are doing water channel work in the middle of the playground and also accused pulled the C.W.1 by holding her hand and tried to outrage the modesty of C.W.1. It is also

further case of the prosecution that accused pulled the C.W.1 and voluntarily caused simple injuries to C.W.1. It is also further case of the prosecution that C.W.8 being the husband of C.W.1 went to the spot at that time accused assaulted the C.W.8 by plastic basket and voluntarily caused simple injuries to C.W.8, thereby accused committed an offences punishable u/Sec.323, 324 and 354 of IPC.

10. In order to prove offences punishable u/Sec.323, 324 and 354 of IPC, the prosecution has to prove following ingredients. For the offence punishable **u/Sec.323 of IPC** the prosecution has to prove following ingredients:

1. that the accused by his act caused bodily pain, disease or infirmity to the complainant.

2. that he did such act intentionally or with knowledge that it would cause the hurt, etc.

11. In order to prove offence punishable **u/Sec.324 of IPC** the prosecution has to prove following ingredients:

1. that the accused caused by his act bodily pain, disease or infirmity to the complainant.

2. that he did such act intentionally or with knowledge that it would cause the pain, etc:

3. that it was unprovoked;

4. that the accused caused it by means of an instrument for shooting, stabbing or cutting; or by an instrument, which used as a weapon is likely to cause death; or by means of fire, etc; or by means of any poison, etc; or by means of any substance which it is deleterious to the human body to inhale etc. or by means of any animal.

12. For the offence punishable **u/Sec.354 of IPC** the prosecution has to prove following ingredients:

1. There must have been assault or use of criminal force on a woman.

2. Such assault or use of criminal force must have been made-

a) with intention to outrage her modesty: or

b) with knowledge that her modesty was likely to be outraged.

13. P.W.2-Smt.Prashanti Prakash Naik is the first informant as well as victim, P.W.1-Ramdas Rumma Naik and P.W.3-Chandrakant Ganapati Naik are the spot mahazar witnesses as per Ex.P.1, P.W.4-Archana Anant Belurkar to P.W.5-Smt.Suchitra Subhash Asnotikar, P.W.6- Deepa Dinkar Naik, P.W.8-Prakash Jagannath Naik and P.W.9-

Smt.Sandhya W/o.Santosh Belurkar are the eye-witnesses, P.W.7-Dr.Rahul S/o.P.D.Baadkar being the Medical Officer, P.W.10-Laxmappa Lagamappa Pujari is the A.S.I. who registered the case and partly investigated the matter and P.W.11-Shashikumar C.R. S/o.Ramayya is the Investigating Officer. Ex.P.1 is the spot mahazar, Ex.P.2 is the first information, Ex.P.3 is the statement of P.W.6, Ex.P.4 is the wound certificate of P.W.2, Ex.P.5 is the wound certificate of P.W.8, Ex.P.6 is the statement of P.W.9 and Ex.P.7 is the FIR. M.O.1 is the spade and M.O.2 is the plastic basket.

14. P.W.2-Smt.Prashanti Prakash Naik in her chief-examination deposes that, on 15.10.2014 at about 8.00 a.m. she and her committee members are doing the water channel work which is situated at Government Higher Primary School, Devalmakki. P.W.2 further deposes that they were doing the water channel work under Udyoga Khatri Yojane of Devalmakki Gram Panchayat, while they doing so at about 10.30 a.m. accused came to the spot and restrained them not to take any soil for construction of water channel, at that time she told that they are not to stop the work, for that accused thrown the plastic basket from her hand. P.W.2 further deposes that she called the C.W.8/ P.W.8 being her husband and at that time accused abused the C.W.8 with filthy language and assaulted the C.W.8 with plastic basket and her husband sustained injuries to his right hand pointing finger. P.W.2 further deposes that the accused also thrown the spade which is they were using and thereafter she filed the first information to Police station as per Ex.P.2 and Police came to the spot and conducted panchanama as per Ex.P.1 and seized one spade and plastic basket in the spot. Thereafter she taken treatment at Primary Health Centre, Devalmakki.

15. P.W.1-Ramdas Rumma Naik and P.W.3-Chandrakant Ganapati Naik are the spot mahazar witnesses as per Ex.P.1, they completely turned hostile to the prosecution case.

16. P.W.4-Archana Anant Belurkar and P.W.5-Smt.Suchitra Subhash Asnotikar deposes in their chief-examination that, on 15.10.2014 in between 10.00 a.m. to 11.00 a.m. they were working inside the compound wall of Devalmakki Government Kannada school and they were doing trench work under Udyoga Khatri Yojane of Devalmakki Gram Panchayat, the accused came to the spot and restrained them to doing the work and pulled the C.W.1. Thereafter C.W.8 came to the spot, at that time accused assaulted him with plastic basket and C.W.1 also fell down to earth and thereafter C.W.8 shifted her to the hospital.

17. P.W.6-Deepa Dinkar Naik is also eye-witness, she completely turned hostile to the prosecution case.

18. P.W.8-Prakash Jagannath Naik being the husband of C.W.1, he deposes in his chief-examination that on 15.10.2014 they

were working inside the compound wall of Government school, Devalmakki, under Udyoga Khatri Yojane and they were shifting the mud from the channel, at that time accused came to the spot and resisted the C.W.1 to stop the work and he put soil to the channel and abused the C.W.1 with filthy language and pulled the C.W.1 by holding her hand. P.W.8 further deposes that he went to the spot in order to pacify the galata, at that time accused assaulted him with plastic basket and he sustained injuries to fingers and he taken treatment in the hospital.

19. P.W.9-Smt.Sandhya W/o.Santosh Belurkar is the eye-witness, he also turned hostile to the prosecution case.

20. P.W.7-Dr.Rahul S/o.P.D.Baadkar being the Medical Officer he deposes in his chief-examination that on 15.10.2014 at about 12.30 p.m. C.W.1 came to the hospital on the history of assault by accused -Gurudas Phayade and he given treatment to her and there is no any external injuries found on her body. P.W.7 further deposes that C.W.1/P.W.1 intimated the pain near to the left hip region and he issued the wound certificate as per Ex.P.4 and injuries mentioned in the Ex.P.4 is simple in nature. P.W.7 further deposes that on same day at about 11.20 a.m. he also treated the C.W.8 on the history of assault by accused person and he found the abrasion over middle finger of right hand and issued the wound certificate as per Ex.P.5. P.W.7 further deposes that injuries mentioned in the Ex.P.5 is simple in nature.

21. P.W.10-Laxmappa Lagamappa Pujari is the A.S.I. who registered the case and partly investigated the matter, he deposes in his chief-examination that on 15.10.2014 at about 5.30 p.m. he was at Mallapur Police station incharge, C.W.1 came to the Police station and filed first information and on receipt of first information, he registered the case against the accused in Cri.No.42/2014 for the offences punishable u/Sec.323, 324 and 354 of IPC and submitted FIR to Court and his higher officers. Thereafter, he sent the C.W.1 to Government hospital, Devalmakki. On 16.10.2014 he went to the spot and conducted spot mahazar in the presence of C.W.1 to C.W.3 as per Ex.P.1 and seized one blue colour plastic basket at the time of conducting Ex.P.1. On same day he recorded the statement of C.W.4 to C.W.7 who are present in the spot while conducting Ex.P.1. P.W.10 further deposes that on same day he filed requisition to Devalmakki Gram Panchayat regarding the construction work and on 18.10.2014 he recorded the statement of C.W.8 and thereafter on 4.11.2014 he handed over further investigation to C.W.12/P.W.11.

22. P.W.11-Shashikumar C.R. S/o.Ramayya is the Investigating Officer he deposes in his chief-examination that on 04.11.2014 he received the case file from C.W.11/P.W.10 and proceeded with further investigation. On 21.12.2014 accused himself appeared before him on the strength of anticipatory bail order of Hon'ble District and

Sessions Judge, Karwar, and thereafter he arrested the accused and followed the arrest procedure and finally released the accused on station bail. P.W.11 further deposes that on 23.12.2014 he recorded the statement of C.W.10 and on same day he received the wound certificate of C.W.1/P.W.2 and C.W.8/P.W.8 from C.W.9/P.W.7 as per Ex.P.4 and Ex.P.5 respectively and finally filed the charge sheet against the accused person.

23. The learned counsel for the accused argued that, P.W.1 and P.W.3 are the spot mahazar witnesses as per Ex.P.1, they completely turned hostile to the prosecution case. It is admitted fact that accused filed criminal case against the C.W.8/P.W.8 being the husband of P.W.2 before Mallapur Police station and it is numbered as Cri.No.41/2014 for the offences punishable u/Sec.323, 324, 504 and 506 of IPC which is registered before registering this case. It is further argued that all the witnesses are interested witnesses and as per first information C.W.8/P.W.8 being the husband of P.W.2 went to the spot after galata, but P.W.8/C.W.8 in his evidence specifically states that, he was already present at the time of galata. It is further argued that Ex.P.1 is the spot mahazar which is conducted on 16.10.2014 and the spot is shown by P.W.1 and the spot mahazar conducted in the presence of P.W.1 to P.W.3. Though the P.W.1 and P.W.3 turned hostile to the prosecution case. But the Ex.P.1 disclose that, P.W.10 seized the one plastic basket only on 16.10.2014, but P.W.2 in her cross-examination specifically states that, Police seized one plastic basket and spade in the spot at the time of conducting Ex.P.1. It is further argued that as per cross-examination of P.W.2 galata is taken place for one hour, but on the contrary P.W.8 states that galata is taken place only 15 minutes. Ex.P.2 is the first information it discloses that first information lodged by P.W.2 to Mallapur Police station at 5.30 p.m. and Ex.P.4 is the wound certificate of P.W.2 it discloses that she visited the hospital at 12.30 p.m. on 15.10.2014 and she also states in the cross-examination that she intimated the assault of accused to the Doctor. Further cross-examination portion of P.W.2 specifically states that, she visited the Mallapur Police station at 1.30 p.m. but FIR is registered at 5.30 p.m. As such there is delay in lodging the FIR that too after registering the case against the C.W.8/P.W.8 by the accused in Cri.No.41/2014. The prosecution failed to prove the guilt of the accused person beyond all reasonable doubt. Hence, prayed to acquit the accused person.

24. On perusal of the entire prosecution documents, evidence and on consideration of arguments made by the learned counsel for accused, no doubt, P.W.1 and P.W.3 being the spot mahazar witnesses as per Ex.P.1 and P.W.9 is the eye-witness, they completely turned hostile to the prosecution case. P.W.2 being the victim and injured, she in her crossexamination specifically states that, P.W.8 being her husband came to the spot after she intimated the fact of incident. But P.W.8 in his evidence specifically states that,

he is already present in the spot at the time of galata. Further P.W.2 in her evidence specifically states that, accused assaulted her and P.W.8 with M.O.1 and M.O.2, but Ex.P.1 is the spot mahazar which is conducted by P.W.10 who seized M.O.2 only on 16.10.2014. The case of the prosecution C.W.1/P.W.2 and her members are doing water channel work under Udyoga Khatri Yojane of Devalmakki, but there is no any record to show that the registration of the society or registration of any Mahila Sangh wherein C.W.1/P.W.2 and others are members. Apart from that the prosecution not produced any document to that the Gram Panchayat Devalmakki running the work under Udyoga Khatri Yojana that too digging of watter channel in the playground of Devalmakki Higher Primary school.

25. As per the evidence of P.W.2 galata is taken place for one hour and public were present at the time of galata, but P.W.8 specifically states that, galata taken place for 15 minutes only. For this aspect also evidence of P.W.1 and P.W.8 are contradictory with each other. It is admitted fact that the accused at first filed first information against the husband of P.W.2 i.e. P.W.8 and case is registered against the P.W.8 in Cri.No.41/2014 for the offences punishable under Sec.323, 324, 504 and 506 of IPC at Mallapur Police station and thereafter present case FIR.No.42/2014 is registered against the accused and in order to harass the accused P.W.8 filed this false complaint through his wife i.e. P.W.2. The evidence of P.W.2 disclose that she intimated assault by the accused to the Doctor and wound certificate also disclose the name of the accused, but the Doctor P.W.7 not intimated the said fact to Police. Further P.W.2 in her evidence specifically states that, the Police seen the blood stained cloth of P.W.8/C.W.8, but the Investigating Officer not seized the blood stained cloth. As per the evidence of P.W.2 one Dhananjaya Naik was present at the time of galata, but Investigating Officer not cited the name of said Dhananjaya Naik as eye-witness.

26. The P.W.8 is not identified the M.O.2. P.W.8 in the crossexamination specifically states that, he and P.W.2 went to the spot simultaneously, but as per evidence of P.W.2 disclose that she intimated the incident to C.W.8/P.W.8 after the incident and thereafter P.W.8 came to the spot. Further P.W.9 is also eye-witness she not supported the case of the prosecution. The evidence brought by the prosecution on record is insufficient to bring home the guilt of accused person beyond all reasonable doubt. Further prosecution is not proved the alleged ingredients of offences punishable u/Sec.323, 324 and 354 of IPC. Accordingly, I proceed to answer point Nos.1 to 3 are in the **“Negative”**.

27. **POINT NO.4:** In view of my findings on point Nos.1 to 3 in the negative, I proceed to pass the following:

ORDER

Acting u/Sec.248(1) of Cr.P.C, accused is acquitted for the offences punishable u/Sec.323, 324 and 354 of IPC.

The bail bond of the accused and surety bond stand cancelled.

M.O.1 i.e. spade and M.O.2 is the plastic basket are the worthless properties same is ordered to be destroy after appeal period.

*(Dictated to the Stenographer, transcribed by her, transcript revised by me, corrected, signed and then pronounced in the Open Court on this the **10th day of January, 2019.**)*

Sd/-

(Amarnath K.K.)

*Addl. Senior Civil Judge & JMFC.,
Karwar."*

2. Apparently, applicant was acquitted.
3. Now the question is at which point can we say that criminal case was said to be pending. Is its genesis to be noted from the date on which the original complaint may have been initiated as in this case apparently the respondent claims that applicant had sought for anticipatory bail and therefore could be said to have knowledge of the criminal case.
4. We had examined the matrix with the help of both the counsels and come to a conclusion that only under Section 240 of CrPC can a criminal case be said to be pending. That is the date on which the Court had taken cognizance of a case. Till then, it is only an allegation made by the party against some other person. That legal question has been settled. The learned counsel for the respondents submits that the charge had been taken up on 03.06.2016 whereas the allegedly offending affidavit has been given by the applicant on 27.02.2015 which is much before that. Therefore, we hold that applicant has to be now declared as eligible for employment as he

has not given any false declaration as at that point of time it could not be assumed that a criminal charge was pending against him. The OA is allowed. A mandate is issued to the respondents to consider the appointment of the applicant if no other issues are raised against him, otherwise, they may issue appropriate orders within one month next.

5. At this point of time, the learned counsel points out that summons was also issued later. Summons is not an issue at all. Why Section 239 had been placed before Section 240 is that, before taking cognizance of a charge, the Court has to examine whether the charge would lie or not and only finding that if a charge would lie proceedings under 240 has to be taken. That being so, that is the genesis of a criminal charge and not the filing of an FIR.

6. At this point of time the learned counsel for the applicant claims for consequential benefits. Other than a notional seniority along with the next junior in the list to be appointed, he cannot claim any backwages or any other benefits as he has not worked in that position. A clarification is issued in this manner.

7. The OA is allowed. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00673/2018

Annexure-A1: Copy of the order passed by the Hon'ble High Court in WP No. 76191-76195/2013 dated 09.10.2013

Annexure-A2: Copy of the attestation form dated 27.02.2015

Annexure-A3: Copy of the appointment order dated 24.07.2015

Annexure-A4: Copy of the criminal complaint filed by the applicant dated 15.10.2014

Annexure-A5: Copy of the FIR dated 15.10.2014

Annexure-A6: Copy of the criminal complaint filed by Smt Prashanthi dated 15.10.2014

Annexure-A7: Copy of the FIR dated 15.10.2014

Annexure-A8: Copy of the show cause notice dated 21.12.2017

Annexure-A9: Copy of the reply submitted by the applicant dated 24.12.2017

Annexure-A10: Copy of the termination order dated 03.04.2018

Annexures referred in reply statement

Annexure-R1: Copy of the Superintendent of Police, Karwar letter dated 09.10.2015

Annexure-R2: Copy of the order sheets in the court of JMFC II, Karwar in CC No. 178/2017

Annexure-R3: Copy of the forwarding letter of Police Verification Report dated 18.09.2017

Annexure-R4: Copy of the Superintendent of Police, Karwar letter dated 24.10.2017

Annexure-R5: Copy of the charge against the applicant by JMFC, Karwar dated 03.06.2016.

Annexures referred in rejoinder

Annexure-A11: Copy of the order of the Additional JMFC, Karwar dated 10.01.2019

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