



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3858 OF 2024

Ratnadeep Ram Patil .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

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Mr.Manoj Mohite, Senior Advocate with Mr.Saurabh Butala, Mr.Harshad Sathe, Ms.Manvi Sharma, Mr.Siddhesh Bane and Mr. Shubham Gangan for the Petitioner.

Ms.Shazia Bano Mohammad Shoeb for the Respondent No.2.

Ms.Sharmila S. Kaushik, A.P.P. for the State/Respondent.

Mr.Rajendra Ghevadekar, attached to Panvel City, present.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

**RESERVED ON : 02nd DECEMBER, 2024
PRONOUNCED ON : 09th DECEMBER, 2024**

JUDGMENT (Per Bharati Dangre, J.) :-

1. By the Petition filed under Section 528 of the Bharatiya Nagrik Suraksha Sanhita, 2023 read with Article 226 of the Constitution of India, the Petitioner, who is an Advocate by profession, seek quashing of F.I.R. No.455 of 2024 registered with Panvel Town Police Station on 20/07/2024, invoking Section 79 of the Bharatiya Nyaya Sanhita, 2023 (for short, "BNS").

2. Rule. Rule is made returnable forthwith. By consent of the parties, the Petition is taken up for final hearing.

We have heard learned senior counsel Mr. Manoj Mohite for the Petitioner alongwith Advocate Saurabh Butala and Advocate Harshad Sathe, whereas the Respondent/State is represented by the learned A.P.P. Ms. Sharmila S. Kaushik. Respondent No.2 is represented by Ms. Shajia Bano Mohammad Shoeb. The Investigating Officer from Panvel City Police Station, Shri. Rajendra Ghevadekar is also present before us with necessary papers, which we have retained with us.

3. Before we adjudicate upon the rival contentions raised before us, we must refer to the brief background in which subject C.R. came to be registered .

On 29/04/2024, an F.I.R. came to be registered by Khandeshwar Police Station on the complaint filed by Respondent No.3, by arraigning one Santosh Koli, Vaishali Koli, Chaitanya Koli and one Krishna Milan Shukla as accused, by alleging that by giving false promise of handsome returns, the accused persons have collected huge sum of money and they have cheated the Complainant alongwith Respondent No.2 as well as one more lady named therein. It was alleged that collectively the victims were duped in the sum of Rs.2,74,87,047.20 and it was alleged that the amount was misappropriated by preparing forged documents.

The said C.R. invoked Sections 406, 420, 465, 467, 468, 471 and 120-B of IPC against the four accused persons and it

was alleged that the amount was transferred to the accused through cheques, on-line transfer and some amount was also paid in cash.

In connection with the said offence, accused-Vaishali Koli was arrested and the services of the Petitioner were engaged by her to represent her in the remand proceedings.

4. In the Petition, it is specifically pleaded that Vaishali Koli is running a Firm-VSK Group, which is engaged in the business of real estate and the Respondent Nos.2 and 3 alongwith other women invested money in her firm voluntarily, as she had assured them handsome returns, but since the business was disrupted on account of unforeseen contingencies, she could not regularly return their investment and she was continuously harassed for return of their money by Respondent Nos.2 and 3.

Her husband, Santosh Koli, transferred his flat at Sukapur in the name of Mrs.Savita Shende, one of the investors, and, therefore, Respondent No.2 was continuously harassing Vaishali Koli to transfer her land at Roha in her name and she accompanied with Respondent No.3, visited house of Vaishali on 29/02/2024 and threatened her to return their money and exerted influence by saying that they have good connections in Police Department and also with Ministers.

5. Santosh Koli, husband of Vaishali, forwarded on-line complaint on 03/03/2024 to Khandeshwar Police Station

against Respondent No.2, where he gave the brief background of the investment made in the company-VSK Group belonging to his wife and specifically made reference to Respondent Nos.2 and 3 along with one more woman. He also stated that the investment made by them in the company was returned from time to time, but in the previous year, since the Company was running through a rough phase, she was not regular in paying the returns and, therefore, she was in depression and was required to be admitted in the hospital on two occasions.

He provided the details of the harassment faced by his wife from the Respondents and also averred that his wife attempted to commit suicide, being fed up of their harassment. He also referred to the financial difficulties faced by them as a family and also mentioned that he had transferred his house in Sukapur in the name of one of the investors and he was pressurized to transfer his plot by Respondent No.2. He has referred to the incident of 28/02/2024, when his wife was brought to the hospital as she was suffering from severe headache. He further stated that on 01/03/2024, his wife had left the house at morning hours and did not return back and he took frantic search for her and received information after some time, that his wife was admitted in the hospital on account of consuming overdose of Vertin 16.

When he read the messages received by her, he realised that she was mentally harassed and was under surveillance.

6. As per the complaint, Respondent No.2 alongwith her husband as well as two other persons had visited the house of Santosh and Vaishali Koli on 29th and threatened Vaishali Koli

that they have contacts with influential people, including the Ministers and by using their contacts, they can manage anything. As per the complaint filed by Santosh, they also manifested to him that they have acquaintance in Police Department and the Respondent No.2 has a lover, whose details were provided, and threats were given by using his name as it was stated that he is a dangerous person and can cause harm to them. Name of one other person was taken by describing him to be the personal assistant of one Minister. Threat was also given that husband of Respondent No.2 was constantly following them by keeping watch on their activities.

The messages were forwarded to him on Whatsapp by giving the names of the persons and, therefore, he made a request for their protection, as he apprehended that his wife would cause injury to herself. Alongwith the complaint, he also forwarded a PDF statement and how much money was accepted by her and how much money was paid.

7. On 03/04/2024, once again, Vaishali Koli addressed a letter to the Senior Police Inspector by naming Respondent No.2, her husband as well as Respondent No.3 and one more couple, requesting the police to take an action by levelling serious allegations against them and requesting registration of F.I.R. under Sections 341, 354-D, 384, 166 read with Section 34 and/or Section 120-B of IPC and Sections 145(2) of the Maharashtra Police Act. When the police officer refused to take action, she addressed repeated communications to DGP, Maharashtra Police, Principal Secretary (Special), Home Department, DCP-Zone 2.

In the meantime, on the complaint lodged by Respondent No.3, C.R.No.132 of 2024 was registered with Khandeshwar Police Station against Vaishali Koli as well as her husband.

8. It is in this case, Vaishali Koli was arrested on 09/07/2024 and produced before the Judicial Magistrate First Class (JMFC), Panvel on 10/07/2024, who remanded her to police custody till 20/07/2024. Thereafter, her husband Santosh Koli was also arrested and produced before the Magistrate on 20/07/2024.

The accusations faced by the present Petitioner arise out of this event, when he as an Advocate, pleaded his case before the Judicial Magistrate First Class, in support of his client, by reiterating the allegations levelled by Santosh Koli in against Respondent Nos.2 and 3, which included the accusation of the nature of relationship shared by Respondent No.2, to which he had made reference in his on-line complaint dated 03/03/2024 and it formed part of his arguments advanced in opposing the remand of his client, Vaishali Koli. At the time of remand, various documents were filed on record, including the complaint made by Santosh Koli as well as the Whatsapp chat.

Admittedly, during the hearing, respective husbands of Respondent Nos.2 and 3 were present in the Court and it is alleged that feeling annoyed and disparaged by the accusations levelled, Respondent No.2 immediately preferred an application before the JMFC, where she referred herself as the Complainant and informed the Court that the lawyer of the accused (the Petitioner) has levelled personal accusations

against her, which do not fit into the four corners of law and the allegations were baseless and infringed her right to privacy, as determined by the Apex Court in the case of Puttaswamy Vs. Union of India. The application categorically state that the Advocate representing the accused has referred to them as “चांडाळ चौकडी” and furnished personal information without any proof thereof to mislead the Court.

She, therefore, described the behaviour of the Advocate as discourteous and requested for appropriate action. An identical application is also filed by Respondent No.3.

The learned Magistrate passed the following order on consideration of the applications.

“Seen and filed. Applicants to take appropriate legal recourse.”

9. Respondent No.2 acted accordingly and approached Panvel City Police Station on the very same day by filing a complaint, which resulted in registration of C.R.No.455 of 2024, which invoked Section 79 of BNS. In the complaint lodged, the Complainant alleged that while the remand hearing was going on before the Magistrate, she alongwith her husband and Respondent No.3 were present in the Court and while advancing his argument, the Petitioner, the Advocate representing the accused, advanced his argument to the following effect :-

“I have love affair/illicit relationship with a police officer. He also accused me that with the help of this police officer, I have attempted to implicate his client and the Complainant and witnesses are “चांडाळ चौकडी”.”

It is the grievance made by the Complainant that since the aforesaid utterances were made in the open Court and during the course of proceedings, which was attended by other lawyers and members of public, it created a feeling of insult and she immediately lodged a complaint in the Court.

The complainant also stated that the Advocate levelled accusations against Respondent No.3, by stating that she had created pressure upon the son of his client to convert his religion and this has caused disturbance of religious feelings of Respondent No.3 and, since, the conduct of the Advocate was objectionable, as by uttering the aforesaid words, he insulted her modesty, she approached the police station being accompanied by her husband and two Advocates representing her.

10. It is in the background of the aforesaid accusations, the Writ Petition is filed for quashing the FIR and the learned senior counsel Mr.Mohite, representing the Petitioner, has focused his arguments on two aspects, namely, whether the utterances would attract the offence under Section 79 of the BNS in absence of any intention being attributed and secondly, since the arguments were made on the basis of instructions received by the Petitioner as an Advocate, with the immunity available to him as an Advocate, whether an offence under Section 79 is made out. Relying upon the well settled principle in *State of Haryana Vs. Bhajan Lal*¹ that, when no offence is *prima facie* made out, an accused shall not be made to undergo the rigmarole of trial, it is the submission of Mr.Mohite that

1 AIR 1992 SC 604

the FIR be quashed, as even the accusations are taken at their face value and accepted in its entirety, it do not *prima facie* constitute any offence or make out any case against the Petitioner.

In support of his first submission about the meaning to be assigned to the term 'modesty of a woman', he would place reliance upon the decision of the Apex Court in the case of ***State of Punjab Vs. Major Singh***² and also upon the decision of the Delhi High Court in the case of ***Varun Bhatia Vs. State & Anr.***³. In support of his second contention, about whether the statement of Advocate, during the course of arguments on instructions of his client, without any malice and intention being imputed, he would rely upon the decision of the learned Single Judge of Delhi High Court in the case ***Pankaj Oswal Vs. Vikas Pahwa***⁴ and also the decision of the Division Bench in the same case reported in ***2024 SCC OnLine Del 1193***.

11. Opposing the contention of Mr.Mohite, the learned Additional Public Prosecutor Ms.Kaushik as well as the learned counsel representing Respondent No.2, has invited our attention to the complaint lodged by Respondent No.2 before the concerned Magistrate, who directed her to take legal recourse and, therefore, she had approached the Police Station, Navi Mumbai with her grievance.

The Complainant has also filed an affidavit before the Court affirmed on 02/12/2024, where she has deposed that upon gaining knowledge that Vaishali Koli and Santosh Koli

² AIR 1967 SC 63

³ 2023 SCC OnLine Del 5288

⁴ (2023) 1 High Court Cases (Del) 546

were arrested, she alongwith her husband and other persons, who had invested money with them i.e. around 8 to 10 people used to attend the Court case. She reiterate the incident, which is alleged to have taken place on 20/07/2024 and the affidavit proceed to state as under :-

“9. I say that on 20/07/2024 all of us were waiting in the court at Panvel in the afternoon around 4:00 pm. our case was called out. I say that at that time one advocate who we later came to know was named Ratnadeep Patil was telling the Court in Marathi that the complainant in this case were threatening and harassing his clients. I say that suddenly I heard my name. As the court room was very small the lawyer for Vaishali Koli was telling the Court that I had illegal relations with other person he said that I had love affair with the Police officer and had made a conspiracy against Vaishali Koli. I say that the lawyer went on repeating the same thing 3 to 4 times in loud voice. I say that everybody could hear what he had said. I say that my husband and other relatives and friends were present in Court also heard this. I say that I was very embrassed and ashamed and started crying in the Court room. I say that thereafter the case was adjourned and Ashwini Bhosale, Savita Shende and myself came outside the Court room both of them were trying to console me. Ashwini Bhosale said that we should go to the Judge and complaint about the lawyer and his false allegations against me. I say that at that time one Advocate Prathamesh Jawale who was watching advocate for the investors said that he will write a complaint letter to the Court and the Court will take some action against the lawyer who had made false allegations against me. I say that at that time I was very disturbed and therewere many people who were trying to help me. I say that I had signed in the application written by the Advocate without reading the same.

10. I say that thereafter Ashwini Bhosale, Savita Shende and myself went to the Chamber of the Judge and gave him the complaint signed by me. I say that we thought that the Judge would immediately call the lawyer and tell him to behave properly. I say that the Judge told us that we should file a complaint in the Police Station against the lawyer and that we should also report him to the Bar Council. I say that after some days Ashwini Bhosale came to know that Santosh Koli had made an online complaint against us.

11. We then went to the Police Station to enquire about the same. As we had to file complaint under RTI to receive copy of the online complaint. I say that on 08/10/2024 the said copy was given to us by the Senior Police Inspector, Addl. Charge, Jan Mahiti Adhikari and RTI Officer, Khandeshwar Police Station. I say that for the first time I became aware that Vaishali Koli and Santosh Koli had filed a complaint against me and made allegations that I was having illegal relations with the Police Officer. I say that this is false

allegation. I say that I had faced a lot of problems in my family life due to the false allegation made by the lawyer in open Court. I say that on 20/07/2024 lawyer had not read out any complaint or any paper in the court room. He was shouting loudly that Sonal Varde and one police officer have illicit relations.”

12. Further the Assistant Police Inspector, Panvel City Police Station, has filed an affidavit in an attempt to corroborate her version by stating as below :-

“7. I state that perusal of the statements of the said witnesses show that the Petitioner who was appearing on behalf of the accused in C.R.No.132 of 2024 has made personal false allegations against the Respondent No.2. He repeated the offensive remarks against the complainant in the open court. The witnesses state that the Petitioner had declared that the Respondent No.2 was having an illegitimate relationship with one police office. I state that the witnesses noted that immediately thereafter the Respondent No.2 being very disturbed began to weep in court. She was very disturbed by the false statements. I crave leave to refer to rely upon the said statements as and when required.

8. I state that the defence of the Petitioner that he was reading out the online letter dated 03.03.2024 that was addressed by his clients to Khandeshwar Police Station is untrue. The Petitioner was arguing loudly in the court in Marathi language and he was not reading any document, to the court. Though the Petitioner claims that he has submitted copy of the letter to the JMFC, neither was such letter brought to the notice of the JMFC by referring to same, nor was a Prosecutor made aware of the same.”

13. When we specifically enquired with the learned A.P.P., whether the API was present in the Court when the incident took place and the facts deposed by him are his first hand information, she answered in the negative. With reference to the on-line application preferred by Santosh Koli, the affidavit contain the following averments :-

“11. I state that the online application dated 03.03.2024 was sent to Khandeshwar Police Station. I state that Assistant Police Inspector Balwant Patil had enquired into the allegations in the said application. The accused Santosh Koli had attended Khandeshwar Police Station and had stated that he will sell his property and settled dues of the victims. This has also been admitted by him in the same application. The Respondent No.2 had also attended the

Khandeshwar Police Station regarding the same enquiry. On the understanding reached that the said Santosh Koli and other accused will settle the claims of the Respondent No.2 and other victims, the said Assistant Police Inspector thereafter closed the enquiry as a dispute of civil nature. Hereto annexed and marked as Exhibit "A" is a copy of the said Report of Khandeshwar Police Station."

14. On hearing the rival contentions, we find that there are two aspects of the matter, the first being, whether the utterances by the Petitioner in his capacity as an Advocate of the accused, whose remand was being opposed, would attract Section 79 of BNS, which is in para materia to Section 509 of the Indian Penal Code, 1860. The provision reads thus :-

"79. Word, gesture or act intended to insult modesty of a woman.- Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object in any form, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine."

From bare reading of the Section, which is identically worded as Section 509 of IPC, the essential ingredients noted are as below :-

- i. Intention to insult the modesty of a woman;
- ii. The insult must be caused by :
 - a. uttering any words, or making any sound
 - b. or gesture.
 - c. or exhibiting any object

intending that such word or sound shall be heard or that the gesture or object shall be seen by such woman, or

- iii. Intruding upon the privacy of such a woman.

The aforesaid provision comprise of three pivotal components for establishing an offence; firstly, the presence of

an intention to insult the modesty of a woman; secondly, the manner in which this insult is perpetrated and thirdly, though independently, an intrusion on her privacy, where it is not restricted to utterance or gesture, as it is not qualified by any prescribed manner.

15. In *Major Singh* (supra), while answering the question whether the Respondent who caused injury to the private parts of a female child of seven and half months is guilty under Section 354 of the Penal Code, an offence of outraging the modesty of a woman, which involves assault or use of criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, Chief Justice A.K. Sarkar, opined that the offence does not depend on the reaction of the woman subjected to the assault or use of criminal force, as the Section contemplate that the act has to be done “intending to outrage or knowing it to be likely that he will thereby outrage her modesty” and this intention or knowledge is the ingredient of the offence and not the woman’s feeling.

In no uncertain terms, the necessary ingredients of the said offence were carved out in the following words :-

“It would follow that if the intention or knowledge was not proved, proof of the fact that the woman felt that her modesty had been outraged would not satisfy the necessary ingredient of the offence. Likewise, if the intention or knowledge was proved, the fact that the woman did not feel that her modesty had been outraged would be irrelevant, for the necessary ingredient would then have been proved. The sense of modesty in all women is of course not the same; it varies from woman to woman. In many cases, the woman’s sense of modesty would not be known to others. If the test of the offence was the reaction of the woman, then it would have to be proved that the offender knew the standard of the modesty of the

woman concerned, as otherwise, it could not be proved that he had intended to outrage “her” modesty....”

16. Intention and knowledge are states of mind and though there can be no direct evidence in that regard, it will have to be inferred from the surrounding circumstances by applying the test of a reasonable man, depending upon the facts of each case. The test of outraging the modesty or insulting the modesty must, therefore, be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman.

In the very same decision, Justice J.R. Mudholkar, with reference to Section 509 of IPC raised a question that if the sole test to be applied is the woman's reaction to particular act, would it not be a variable test depending upon the sensitivity or the upbringing of the woman and rejected the test of a woman's individual reaction to the act of the accused, but clearly observed that it would be very difficult to lay down a comprehensive test in that regard. It was, therefore, expressed that when any act done to or or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that act must fall within the mischief of that Section.

Justice R. S. Bachawat, while referring to the term “modesty”, which is not defined in the Act, attempted to ascertain what is woman's modesty and answered it as below :-

“I think that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under Section 354. The culpable intention of the

accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as, for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anesthesia, she may be sleeping, she may be unable to appreciate the significance of the act; nevertheless, the offender is punishable under the section.”

17. In *Varun Bhatia* (supra), the Delhi High Court in the year 2023, had an opportunity to once again determine what modesty of woman would convey in the context that the allegations put by the prosecution revolve around the use of the term ‘Gandi Aurat’, with the contention advanced that such utterance amounted to outraging the complainant’s modesty under Section 509 of IPC.

The said issue, therefore, called upon to determine the essence of the term “modesty” within the legal framework.

After highlighting the essentials of Section 509, a distinction was sought to be drawn between the provision contained in form of Sections 354 and 509 and the similarity was noted by observing that in both the said Sections, the issue is about outraging modesty of a woman, but in distinct ways, as Section 354 involve physical assault or use of force against a woman, wherein her modesty is violated through actions that involve direct contact or physical harm. On the other hand, Section 509 concerns instances where words, gestures, or acts are employed with the deliberate intent to insult or offend a woman's modesty, without necessarily involving physical force.

Re-announcing that the distinction is reflective of the forms in which the modesty of a woman can be outraged, both physical and verbal, the authoritative pronouncements on the

said subject in case of *Major Singh* (supra) and *Rupan Deol Bajaj Vs. Kanwar Pal Singh Gill*⁵ as well as the decisions of distinct High Courts were re-counted.

While defining the intention in context of Section 509 of IPC, it was observed thus :-

“39. Outraging modesty has been defined as circumstances involving indecent conduct on the part of the accused, wherein the accused's behaviour or actions are such that they deliberately and egregiously offend or insult the modesty, dignity, and self-respect of a woman.

40. Indeed, an essential aspect of outraging the modesty of a woman is the presence of indecent intention. In legal terms, it's not merely the act itself but the intent behind it that matters. To qualify as an outrage to modesty, the accused must have a deliberate and indecent intention in their actions or behaviour. This means that their conduct is not accidental or innocent but is driven by a specific purpose to offend or insult the modesty, dignity, or self-respect of a woman. The requirement of indecent intention serves as a crucial element in distinguishing between regular interactions and actions that constitute an offence against a woman's modesty, emphasizing the need to prove both the act and the intent in such cases.

41. In the assessment of an accused individual's intention to outrage the modesty of a woman, a comprehensive examination of numerous factors becomes essential. This evaluation extends beyond the mere act itself, delving into the accused's intent and the context in which the action occurred. Factors such as the nature of the act, the choice of words or gestures, the surrounding circumstances, the accused's background, and the complainant's perspective are all meticulously considered. Furthermore, cultural and social norms, as well as any independent evidence, play pivotal roles in this determination. By scrutinizing these multifaceted elements, the legal system strives to discern whether the accused possessed the indecent intention to insult, offend, or abuse the woman's modesty. Such a thorough approach recognizes the complexity of human behaviour and ensures that justice is met with a comprehensive understanding of the unique circumstances of each case.

42. Indeed, a delicate balance must be struck when construing the intention of the accused in cases of outraging the modesty of a woman. It is not appropriate to automatically presume the existence of this intention without thoroughly considering the multifaceted elements mentioned above. Precise and context-specific assessments are required to ensure that justice is both fair and accurate. This balanced approach acknowledges the need to

⁵ (1995) 6 SCC 194

protect the rights and dignity of women while also recognizing the complexities and nuances of human behaviour, as well as the importance of considering the specific circumstances and background of each case.”

18. From the above authoritative pronouncement and reading of Section 79 of BNS which has been invoked against the present Petitioner, it is evident that it is the word, gesture or act which is intended to insult modesty of a woman, is punishable under Section 79 of BNS and presence of mens rea is sine qua non of the offence. The person who has uttered the word or by any gesture must intend that by this act of his, he is likely to insult modesty of a woman. Though we accept that casting aspersions on the character of a woman by referring her, to have an extra marital affair, if it is so said deliberately or egregiously to offend or insult her modesty, would definitely amount to reducing the dignity of a self respected woman. When the act of an accused is not incidental, but driven by an intention that it would insult her modesty or her self respect, there is no doubt in our mind that the offence under Section 79 is committed.

But, we must bear in mind the word of caution in *Varun Bhatia* (supra), that a balance must be struck when construing the intention of the accused in cases of outraging the modesty of a woman and that it will not be appropriate to automatically presume the existence of this intention, without thoroughly considering the multifaceted elements involved, including the cultural and social norms, where the incident had occurred, the circumstances in which the statement is made. As expressed in the said pronouncement, “precise and context-

specific assessments is required to ensure that justice is both fair and accurate.”

19. When we turned our attention to the facts before us, we have noticed that in the existing dispute, the Petitioner was engaged as an Advocate to represent one of the accused, who was arrested on 09/07/2024 pursuant to the FIR lodged by Respondent No.3 with Khandeshwar Police Station, which had invoked Sections 406, 420, 465, 467, 468, 471 and 120-B of IPC against her and three other co-accused. Santosh Koli, her husband, was also arrested and produced in connection with the said offence.

While the hearing on remand proceedings was going on before the Magistrate , Panvel, the Petitioner, as an Advocate, referred to the allegations levelled by Santosh Koli against Respondent Nos.2 and 3 and it is not in dispute that this complaint made by Santosh Koli on-line was received by Khandeshwar Police Station and in fact, in the affidavit filed by Rajendra Ghevadekar, API, Panvel City Police Station on 02/12/2024, he has categorically admitted that the on-line complaint dated 03/03/2024 was received and was inquired into and for that purpose, the maker of the application had attended Khandeshwar Police Station and given assurance that he will sell his property and settled the dues of the victim. Respondent No.2 had also attended the police station and on the understanding reached that the accused persons will settle the claim of Respondent No.2 and other victims, the API closed the inquiry on finding that the dispute is of civil nature.

It is, therefore, not in dispute that the complaint was preferred by Santosh Koli and in this complaint, there was a reference to Respondent No.2, as according to the complainant, his wife was harassed by Respondent Nos.2 and 3 and was also threatened on the pretext that they have personal contacts with the superiors and one such instance was given about Respondent No.2, being in close proximity with one police personnel and his wife was threatened by projecting this acquaintance.

20. Based upon the complaint, the argument is advanced by the Petitioner while defending the remand proceedings and the stand adopted is that he was performing his duty to uphold the best interest of his client and had no intention to insult the modesty of any woman and he had no malice or ulterior motive, as he was not acquainted with Respondent Nos. 2 and 3 or had any personal information about them and neither he had any enmity nor any personal grudge. In absence of intention on part of the Petitioner, who was discharging his professional duty towards his client in good faith, it is the submission of Mr.Mohite that no offence is committed by him.

21. Reliance is placed upon the decision in the case of *Navin Parekh Vs Madhubala Shridhar Sharma & Ors.*⁶, in the backdrop that the lawyer had forwarded certain letters on behalf of his client where it was alleged that he had acted in highly unprofessional and unethical manner and he was sought to be prosecuted for alleged defamation, since the

⁶ 1992 Mh.L.J. 1409

words used in the letter were per se defamatory. It is in these facts, it was held that where a party on the basis of sufficient material arrives at a conclusion and states its case and the contemplated course of action in the legal correspondence, it would be wholly inappropriate to allege that an offence of defamation is committed. Justice M.F.Saldanha held that, “in the case of an Advocate where express malice is absent, a Court having due regard to public policy would be extremely cautious of depriving him of the protection of Exception 9 to Section 499 Indian Penal Code. The Trial Magistrates would be well advised to be doubly cautious while entertaining complaints against legal practitioners because the law does confer on them certain privileges which are necessary for the conduct of their professional duties. It is, therefore, only in that class of cases where those privileges have been virtually abused alone, the process should be issued. The obligation of making out a case that the accused, who is an advocate had not acted in good faith and that he had acted maliciously is, therefore, a condition precedent and in absence of this necessary ingredient, the prosecution cannot be sustained.”

22. In *Pankaj Oswal* (supra), the Division Bench of Delhi High Court, while hearing an Appeal against the judgment rendered by the learned Single Judge, who had rejected the plaint instituted by the appellant, for initiation of defamatory action against the respondent, a senior advocate, alleging that he had used unparliamentary language in the proceedings held before the Sessions Court, Patiala House Courts. Before a Division Bench, substance of the argument advanced was, the Single Judge had failed to appreciate that the lawyers are not

conferred with absolute privilege if, in exercising their right of audience before a Court, they infringe a person's fundamental right to reputation, which is embedded in Article 21 of the Constitution. It was also urged that the Single Judge had failed to address the issue concerning the relevancy of the defamatory statement made by the respondent to the proceedings being carried on before the Session's Judge, and, since the defamatory statement was irrelevant to the said proceedings, it was not protected by the privilege that the law confers on a lawyer.

On analysing the arguments advanced with reference to the action of defamation, the Division Bench focused its attention on the definition of 'privilege'; which is of two kinds; qualified and absolute privilege.

Distinguishing between the two, the former kind, prohibiting the entertainment of claims made against judges, counsel, witnesses or parties qua judicial proceedings made in Courts or tribunals, it was noted that this privilege extends to witness statements, testimonies, and documents properly used and regularly prepared for use in judicial proceedings, but the exception carved out, being a statement which is not uttered for the purposes of judicial proceedings by a person, who has a duty to make a statement in the course of the proceedings, or the statement made has no reference at all to the subject matter of the proceedings. It was thus noted that the doctrine of absolute privilege does not protect such statements. It is well accepted principle in law that right to free speech is not an absolute right and one cannot assert existence of this right by levelling reckless utterances, which tantamount to defame

another person, as the said person against whom the statement is made, equally has a right of his dignity, which is a part of his fundamental right under Article 21 of the Constitution of India. The privilege conferred upon an Advocate definitely is restricted to the purpose of judicial proceedings in which he is cast with a duty to advance his submission or make such statement, which is relatable to the subject matter of the proceedings.

23. With this principle being kept in mind, we have looked at the statement made by the Petitioner, which is based upon the assertion made by his client in the complaint, which he had already preferred on-line and in absence of any malice or intention on his part, we fail to understand how it would attract Section 79 of BNS, which punishes an offence of insulting the modesty of a woman.

It is worth to note that the complainant i.e. Respondent No.2, who immediately upon occurrence of the incident made a complaint to the Magistrate, only state that the Petitioner, the Advocate representing the accused persons had made personal allegations, which were not within the framework of law and the Advocate was accused of referring to them as "चांडाळ चौकडी". Surprisingly, there is no reference in the said complaint about casting an aspersion on her character, which was specifically reflected in the complaint made to the police station.

It is also worth to note that a similar complaint is filed by the Respondent No.3 before the Magistrate, where she alleged that the Petitioner, as an Advocate, had levelled personal and

religious allegations, which has infringed her right to privacy, as laid down in Puttaswamy Vs. Union of India and they were referred to as “चांडाळ चौकडी”. By uttering the words, which do not fit into the four corners of law, it amounted to insulting her modesty.

It is highly unbelievable that a woman, who is aggrieved by the unjustified comment made against her, when approached the Court, failed to refer the said utterance. But, immediately when she approached the police station in the evening, accompanied by her lawyer, she specifically make this assertion by stating that the Petitioner had accused her of having a love affair with police officer and with his aid, has conspired to implicate the accused persons.

The complaint before the Magistrate, preferred immediately upon the incident having occurred, contains no reference to anything alleged to have been said by the Petitioner about her alleged connect with the police officer.

Even in the affidavit, which the Respondent No.2 has affirmed, we find an exaggerated version, as she has stated that the Advocate was telling the Court in Marathi that the complainant was threatening and harassing his clients and then she heard her name and it was told to the Court that she had illicit relations with a police officer and this was repeated by the Petitioner three to four times in loud voice and everybody could hear what he had said. Her husband and other relatives were present in the Court and they also heard the same and she felt embarrassed and ashamed and started crying in the Court.

Offering justification as to why there is no reference to the utterances in the complaint made to the Court, she stated that she signed the application written by her Advocate, without reading the same. It is thus clear that she was assisted by an Advocate and if the utterances so specifically made attributing unchastity to her, definitely the Advocate who was present, ought to have also mentioned it in the complaint.

The variance in the complaint preferred by her to the Magistrate and to the Police Station, creates a doubt in our mind about its authenticity. We have looked into the statements recorded during the course of investigation as the learned A.P.P. has handed over the papers of investigation to us, but unfortunately we find that the statements are of the interested persons i.e. the husband of Respondent No.2, one Savita Shende, the Respondent No.3 and other persons, who were known to Respondent No.2.

24. In the wake of the discrepancy in the version of the complaint made by Respondent No.2 before the Magistrate, where she was referred to as "चांडाळ चौकडी", and the version in the police complaint, which she admit to be as per the instructions of a lawyer and she approached the police station alongwith her counsel, we are not ready to accept it as gospel truth.

In any case, since we find that there was no intention on part of the Petitioner to insult her modesty, as he was only discharging his duty of defending his clients in the remand proceedings and even if he had cast aspersions upon her

character, since they were based on the instructions received from his clients, which has reference in the complaint made on-line and its receipt in the police station is not denied, we deem it appropriate to extend the privilege of an Advocate to the present Petitioner and moreso, what we find is, the statement is not unconnected to the case, as it is the case of his client that by using the pressure tactics, they were being coerced to pay the money.

Whether the money was due and payable is not an aspect, which we are called upon to determine and, therefore, leaving it there, we find the utterances by the Petitioner to be protected by the privilege conferred upon him, as they were uttered in the judicial proceedings and they were connected with the remand proceedings, as the accused persons (his clients) were sought to be remanded in the offence of cheating, which they are accused of.

It is also surprising to note that the complaint filed by the Respondent No.3 before the Magistrate was not taken forward and no F.I.R. is filed and the two complaints before the Magistrate for that matter are identically worded, but the Respondent No.2 filed an improved version of it before the concerned police station, resulting in invocation of Section 79 of BNS.

25. Applying the test laid down by the Apex Court in ***Bhajan Lal*** (supra), where no case is made out to prosecute the petitioner, in the wake of the aforesaid discussion, the continuation of the proceedings against him are found by us

nothing but abuse of process of law and, since, a case is made out for quashing of the FIR, we allow the Writ Petition, by quashing and setting aside FIR No.455 of 2024 registered with Panvel Town Police Station, invoking Section 79 of the Bharatiya Nyaya Sanhita, 2023.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)