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**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 356 OF 2020

Mr. Ravindra s/o. Baliram Dhawale  
Age 23 years, Occu. Business,  
R/o. Shivajinagar, Hudco, Tuljapur,  
Tq. Tuljapur, District Osmanabad.

**....Applicants.**

**Versus**

1. The State of Maharashtra  
Through its Secretary,  
Home Department, Mantralaya,  
Mumbai.
2. The Superintendent of Police,  
Osmanabad, Dist. Osmanabad.
3. In-charge Police Station Officer,  
Tuljapur Police Station, Nanded,  
Tal. and Dist. Nanded.
4. Mr. Harshwardhan Govind Gawali,  
Age     years, Occu. Service as PI  
Police Station Tuljapur, R/o. Tuljapur,  
Tq. Tuljapur, Dist. Osmanabad.

**....Respondents.**

Mr. V.D. Sapkal, Senior counsel for applicant.

Mr. S.J. Salgare, APP for respondents.

**CORAM : T.V. NALAWADE AND  
SHRIKANT D. KULKARNI, JJ.**

**DATED : 23/11/2020.**

**JUDGMENT : [PER T.V. NALAWADE, J.]**

- 1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal. The learned APP represented respondent No. 4 informant, who was police officer.

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2) In F.I.R. given on 2.1.2020 to Tuljapur Police Station, District Osmanabad, it is the contention of respondent No. 4 that he was working in Tuljapur Police Station as Police Inspector from 2.11.2019. It is his contention that he and Sub Divisional Police Officer Shri. Dilip Tiprase had taken steps to curb illegal activities which were going on in the past within local jurisdiction of Tuljapur Police Station. It is contended that he was not succumbing to pressure of anybody and due to that present applicant has made false allegations against him and Tiprase by sending representation to his superior officer and by publishing news in local newspaper.

3) It is the contention of respondent No. 4 that he came across the news item published in 'Khadtar Pravas' newspaper that a crime of rape was registered against him on the basis of report given by a lady police officer. It is contended that even when 'B' summary report was filed in the said crime such news was published. It is contended that when he was taking steps to curb illegal activities, in the news, it was published that he had joined hands with the persons involved in illegal activities and he was getting share in the money made by those persons. It is contended that in news item it was published that he had joined hands with thieves also and he was getting 50% share in the property stolen by the thieves. It is contended that in the news item it was published that for settlement of the dispute between the parties, he was extracting money from

both the sides.

4) It is the contention of respondent No. 4 in F.I.R. that he had put in 28 years of service and he had worked with honesty and integrity throughout. It is his contention that due to the news item he is feeling disturbed and depressed as the news item has defamed him in the society. It is contended that it is the applicant at whose instance the news item was published and so, he has committed the offence punishable under section 3 of the Police (Incitement to Disaffection) Act, 1922 (hereinafter referred to as 'the Act' for short) and section 500 of Indian Penal Code (hereinafter referred to as 'I.P.C.' for short). On the basis of this report, the crime at C.R. No. 2/2019 was registered against the applicant and during pendency of the matter chargesheet was filed for these offences.

5) This Court has carefully gone through the papers filed by both the sides. The learned APP opposed the present proceeding.

6) The papers contain record like remand reports. That record shows that in the aforesaid crime, present applicant was arrested on 9.1.2020 and he was produced before J.M.F.C. at 7.00 p.m. of 10.1.2020. The papers show that applicant made allegations of illtreatment, assault against the police officers. The papers show that magisterial custody was granted on 10.1.2020 till 11.1.2020 and

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the applicant was referred for medical examination. The papers show that medical examination revealed that there were four injuries like contusions on different parts of the body and the age of the injury was within 12 to 14 hours. He was examined on 11.1.2020. On the basis of this record, explanation was also called by the J.M.F.C. of concerned. The request made for police custody on 11.1.2020, but this request was rejected and on that day, Magistrate released the applicant on bail.

7) The record shows that on 2.3.2018 one lady police officer had given report against respondent No. 4 that he had sexually exploited her and he had committed the offence punishable under section 376 (2) (G) of I.P.C. The crime at C.R. No. 79/2018 was registered on the basis of said report in Ashti Police Station, District Beed. It was registered for offence punishable under section 3(2)(5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act also.

8) The record shows that applicant sent representation to Director General of Police, Maharashtra on 30.12.2019 and he requested to see that respondent No. 4 is transferred from Tuljapur Police Station. Copies of representation were sent to Collector Osmanabad and District Superintendent of Police Osmanabad. In the representation, he mentioned C.R. No. 79/2018 which was registered

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against respondent No. 4 and he mentioned the aforesaid allegations which were published in the newspaper. In general the allegations were made of bad character and corruption against respondent No. 4. Photocopy of weekly newspaper 'Khadtar Pravas' dated 30.12.2019 is also produced on the record. One Prabhakar Londhe is shown as editor of this newspaper. When the representation was sent to higher officer on 30.12.2019, the F.I.R. was given by respondent No. 4 against applicant on 2.1.2020.

9) The learned Senior Counsel Shri. Sapkal representing the applicant submitted that at any stretch of imagination and even after accepting the allegations made by respondent No. 4 as they are, it cannot be said that the applicant has committed the offence punishable under section 3 of the Act. This Court has carefully gone through the provisions of the Act. This Act was made by British. The object and reasons of the Act are given as under :-

**“Statement of Objects and Reasons :-** In view of the attempts that have been made and are being made (a) by means of threats, intimidation and otherwise to induce members of the police-force to refrain from doing their duty, and (b) to spread disaffection among them, the Government of India have for some time had under consideration the question of penalising such attempts. Neither the Indian Penal Code nor the Indian Police Act, 1861, contains provisions to meet this evil. A prosecution

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could doubtless in certain cases be instituted under section 29 of the Indian Police Act, 1861, read with the abetment sections of the Indian Penal Code, but section 29 of the Police Act was designed to meet ordinary breaches of discipline, and would not cover many dangerous forms of tampering with the police. Moreover, the maximum punishment permissible under that section, viz., three months' rigorous imprisonment is manifestly inadequate for serious offences of this nature. The Government of India are accordingly of opinion that the authorities should be given additional means of dealing with this form of crime, and it is proposed, therefore, to enact the attached Bill, which has been framed on the lines of section 3 of the English Police Act of 1919 (9 and 10 Geo. V. Ch. 46).

10) Section 3 of the Act runs as under :-

**“3. Penalty for causing disaffection, etc. :-**

Whoever intentionally causes or attempts to cause, or does any act which he knows is likely to cause disaffection towards the Government established by law in India amongst the members of a Police force, or induce or attempts to induce, or does any act which he knows is likely to induce any member of a police force to withhold his services or to commit a breach of discipline, shall, on conviction, be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or be punished with imprisonment which may extend to six months, or with fine which may extend to

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two hundred rupees, or with both.

*Explanation.-* Expressions of disapprobation of the Government with a view to obtain their alteration by lawful means or disapprobation of the administrative or other action of the Government do not constitute an offence under this section unless they the cause or are made for the purpose of causing or are likely to cause disaffection.”

11) Section 4 of the Act saves the acts done by police association and others for certain purposes which are to furthering the interest of members of police force. Section 4 (A) shows that offences committed under the Act are to be cognizable and non bailable. These offences are to be tried summarily by the Judicial Magistrate, First Class. The Maharashtra Amendment shows that maximum punishment which can be given for the offence is imprisonment of three months.

12) In support of the contentions made by the learned Senior Counsel, a copy of judgment delivered in **Criminal M.A. No. 7536/2008 decided with other applications on 18.4.2012 by Gujrat High Court (Bharat Desai, Editor, Times of India and Anr. Vs. State of Gujarat and Anr.)** is produced. This judgment shows that relief of quashing of F.I.R. was claimed by the editor of Times of India and the crime was registered for offences punishable under section 124-A , 120-B and 34 of I.P.C. and section 3 of the Act.

The facts mentioned in the judgment show that various articles were published in Times of India on different occasions against the newly appointed Police Commissioner of Ahmadabad. There were similar allegations like contacts with criminals against the said Police Commissioner. The Police Commissioner gave report due to the publication of such allegations in newspaper and the crime was registered. There was one more circumstance in that case. There were comment of the newspaper against the State Government that a person of criminal background was appointed as Police Commissioner of Ahmadabad. It was the case of State that due to such publication there was possibility of creation of disaffection amongst members of police force and that had created probability that subordinates of Police Commissioner may refuse to obey his orders and that may also spread indiscipline. The High Court held that such comments questioning the wisdom of State Government cannot lead to inference that there was intention of the publisher to induce or incite police which is requirement of section 3 of the Act. It is further held that such disaffection needs to be created amongst police and it should be against the Government. In view of the wording of section 3, this Court holds that the interpretation of section 3 made by Gujrat High Court needs to be accepted and used in the present matter also.

13) Copy of order made by Honble Apex Court in **Civil**



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**Appeal No. 4815/2013 (N. Sengodan Vs. Secretary to Government, Home (Prohibition and Excise) Department, Chennai and others)** is produced. In relation to section 3 of the Act, some observations are made by the Apex Court and they are at para No. 29 and they are as under :-

“29. It is apparent from Section 3 of the Act 1966 that there is no specific ban to form association but there is a restriction to form association. A Police personnel can be a member of, or can be associated in any way with, any trade union, labour union, political association or with any class of trade unions, labour unions or political associations only with the express sanction of the Central Government or of the prescribed authority. For attracting the penalty under Section 3 for causing disaffection, it is to be proved that the person concerned intentionally caused or attempted to cause or done any act which is likely to be disaffection towards the Government established by law in this country among the members of the Police force or induces or attempts to induce or does any act which he knows likely to induce any member of the Police force to withhold his service or committed breach of discipline.”

By making similar observations, Court of this Bench had given relief in **Criminal Application No. 3613/2012 (Vijay Harakchand Tatiya and Others Vs. The State of Maharashtra)** decided on **3.12.2012** and copy of that decision is also produced.

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14) In the present matter, the relevant allegations made against respondent No. 4 are already quoted. It is the case of respondent No. 4 that allegations are unfounded and they have defamed him. In view of the wording of section 3 of the Act, it can be said that the purpose of the publication of the matter was not to create disaffection amongst police or incite them to act against the Government. Thus, even if the allegations made in the F.I.R. are accepted as they are, they cannot make out offence punishable under section 3 of the Act.

15) This Court had given sufficient opportunity to learned APP to show the provisions of any other Act making liable to the applicant for commission of the cognizable offences. The learned APP went through the provision of Police Act. He submitted that there is no such provision. It can be said that the aforesaid allegations made by the applicant may amount at the most offence of defamation punishable under section 500 of I.P.C. It is open to respondent No. 4 to take appropriate action permissible under law for making such allegations against him. The use of section 3 of the Act is not possible in such a case and it can be said that respondent No. 4 took such steps that may amount to abuse of the power. This Court holds that the case filed against applicant for offence punishable under section 3 of the Act needs to be quashed and set aside. If that part of

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the case is quashed and set aside, the remaining offence punishable under section 500 of I.P.C. is non cognizable one and police case will not be tenable. The learned J.M.F.C. may take appropriate steps in view of this situation. In the result, following order :-

**ORDER**

- (1) Criminal Application is allowed.
- (2) The case filed against the applicant for the offence punishable under section 3 of the Police (Incitement to Disaffection) Act, 1922 is hereby quashed and set aside.
- (3) It is open to the informant to agitate his private grievance like his defamation which may be punishable under section 500 of I.P.C. by filing appropriate proceeding.

Rule is made absolute in those terms.

**[ SHRIKANT D. KULKARNI, J.]**

**[ T.V. NALAWADE, J.]**

SSC/