

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 579 OF 2016

DISTRICT : SOLAPUR

Shri Vishnu Krishnaji Pawar,)
Occ : Senior P.I, MIDC Police Station,)
Solapur.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Addl. Secretary,)
Home Department, Mantralaya,)
Mumbai.)
2. The Director General of Police,)
State of Maharashtra,)
Police Headquarters, S.B. Marg,)
Colaba, Mumbai 400 001.)
3. The Commissioner of Police,)
C.P Office, Solapur.)...**Respondents**

Shri R.G Panchal, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

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CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 29.07.2016

ORDER

1. Heard Shri R.G Panchal, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging his suspension by order dated 1.6.2016. The Applicant is due for superannuation on 31.7.2016.

3. Learned Counsel for the Applicant argued that the Applicant was working as Senior Police Inspector at M.I.D.C Police Station under the Solapur Police Commissionerate. He was placed under suspension by order dated 1.6.2016 subject to final decision in the Criminal Case no 274/2016 registered on 29.5.2016 and the Departmental Enquiry for which charge sheet was issued on 1.6.2016. Learned Counsel for the Applicant stated that an F.I.R under Section 504, 506 and 509 of the Indian Penal Code (I.P.C) along with Section 3 of the Police (Incitement to Disaffection) Act, 1922 was filed against the Applicant at Sadar Bazar Police Station, Solapur on 29.5.2016 by Smt Aparna Sudhakar Gite,

Deputy Commissioner of Police, (Crime), Solapur. Learned Counsel for the Applicant stated that the complaint has been registered on the basis of secretly intercepted conversation involving the Applicant and the Applicant has been alleged to have used improper and abusive language against her (Smt. Gite). The Complainant has not disclosed the source as to where and how the conversation in question was intercepted or recorded. The Applicant had specifically denied the alleged conversation. Learned Counsel for the Applicant stated that Smt Gite has alleged that she received the clip of conversation on 12.4.2016 and she filed complaint on 29.5.2016. This period was sufficient to verify the authenticity of the recorded conversation. Learned Counsel for the Applicant further stated that telephonic conversation can be intercepted on the orders of the authorities mentioned in Indian Telegraph Rules, 1951. A D.C.P has no authority under the said rules or under Section 5(2) of the Indian Telegraph Act, 1985 read with Rule 419A of the Indian Telegraph (Amendment) Rules, 2007 to intercept telephonic communication. The secret interception is, therefore, illegal.

4. Learned Counsel for the Applicant stated that in the Preliminary Enquiry, statements of various Police personnel have been recorded, which are exact verbatim copies of each other. In any case, none of the witnesses had actually heard the conversation of the Applicant.



Learned Counsel for the Applicant argued that the impugned order dated 1.6.2016 is arbitrary, unjust and unreasonable. Appointing authority of the Applicant is the Director General of Police and the Respondent no. 3 has no authority to pass such an order. There is no prima facie evidence to invoke Section 3 of the Police (Incitement to Disaffection) Act, 1922. Similarly, no offence under Sections 504, 506 & 509 of I.P.C is made out.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant had used abusive and improper language against his superior officers, including D.C.P Smt Gite, who is a lady officer. Smt Gite, after a Preliminary Enquiry was held against the Applicant, had herself filed an F.I.R against the Applicant. Smt Gite had received an audio clip on her mobile phone on 12.4.2016. This clip was heard by various witnesses, who have given statement that the voice is that of the Applicant. Learned Presenting Officer argued that there is sufficient evidence to place the Applicant under suspension. The Applicant is not governed by the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, but by the Bombay Police (Punishment & Appeal) Rules, 1956. As per Schedule to these rules, all Commissioner of Police can place Police Officers of and below the rank of Police Inspectors under suspension. If the authority issuing suspension order is

lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order of suspension was made. Learned Presenting Officer argued that there is no ground to challenge the order of suspension.

6. It is seen that the Applicant has stated that he is a Police Inspector, and his appointing authority is Director General of Police, Maharashtra, the Respondent no. 2. The Respondent no 3, i.e. Commissioner of Police, Solapur, is not competent to place him under suspension. The Respondent no. 3 is relying on Rule 3(1-A)(i) of the Bombay Police (Punishment & Appeal) Rules, 1956, which inter alia, empower any other authority empowered by the State Government to place a Police Officer under suspension where an inquiry into his conduct is contemplated or pending or a complaint against him of any criminal offence is under investigation or trial. It is seen that the State Government has issued notification dated 12.1.2011 under Rule 3(1-A)(i) of the Bombay Police (Punishment & Appeal) Rules, 1956 empowering a Police Commissioner to place a Police Inspector under suspension. On this ground, impugned order of suspension dated 1.6.2016 cannot be challenged.

7. In para 4.3 of the Original Application, the Applicant had stated that:-

“4.3 The Applicant says that one Mrs Aparna Sudhakar Gite, Deputy Commissioner of Police, lodged a complaint dated 29.5.2016 to the Sadar Bazar Police Station, Solapur, alleging and complaining that on 20.4.2016, at 19.30 she received secretly intercepted conversation allegedly involving the Applicant and that the Applicant used improper and abusive language. The Police Station registered a crime against the Applicant for the offences 504, 506 and 509 under Sections of IPC as well as Section 3 of Police (Incitement to Disaffection) Act, 1922.”

In Para 7 of the affidavit in reply of the Respondent no. 3 dated 28.7.2016, this has been admitted. The Respondent no. 3 has accepted that the whole case against the Applicant is based on ‘secretly intercepted conversation’ involving the Applicant. In para 4.4, the Applicant has stated that:-

“4.4 The Applicant says that the complainant or no other persons has disclosed the source as to where and how the conversation in question was intercepted or recorded.”

In para 8 of the affidavit in reply, this issue has been dealt with there is no mention as to who had recorded the alleged conversation of the Applicant. Though there is denial of contents of para 4.4 of the O.A., the Respondents have failed to give details of the place where the Applicant made these utterances/conversation and the audience before whom these utterances were made. This aspect has crucial bearing on the outcome of this Original Application.

In para 4.5 of the Original Application, the Applicant has stated that the Respondents did not make any efforts to determine whether the audio conversation of the Applicant was genuine or fabricated. The Applicant has also alleged violation of provisions of Indian Telegraph Act, 1985 and the Indian Telegraph Rules, 2007. The Respondents have stated the following in the affidavit in reply:-

“9. With reference to Para 4.5, I say and submit that the provision of Telegraph Rules, 1951 is correct however offence is under investigation which offence registered against the Applicant. These are provisions applicable for interception of phones. The speech recorded this is by way of mobile audio recorder.”

It is clear admission that the complainant (D.C.P Smt Gite) was not authorized to order interception of telephonic conversation of the Applicant. It is stated that what was recorded was recorded on mobile audio recorder. From this, it is also clear that the Respondents have accepted that they have not verified the authenticity of the alleged audio clip, to determine whether the voice in the audio-clip is that of the Applicant. The voice in the audio clip could have been sent for forensic examination to match with the voice sample of the Applicant. This has not been done. It is alleged in charge no. 1 in the D.E. that the Applicant was under the influence of liquor while on duty on 12.4.2016. However, the Respondents did not made any efforts to send the Applicant for medical examination at that time.

In para 4.7 of the Original Application, the Applicant has stated that:-

“4.7 The Applicant says that the statement of various Police Personnel which came to be recorded, are exactly verbatim copies of each other and based on hearsay and none of asserted to be the direct witness to the alleged involvement of the applicant. However, none of them has given account as to how the aforesaid conversation was recorded. Surprisingly, the complainant herself has not stated as to how and in what manner, alleged

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communication/conversation was intercepted. The gist of the statements as given by the police personnel, is that the complainant played the recorded/intercepted conversation on her mobile on 22.4.2016 in the office of complainant herself and that the police personnel heard the voice of applicant talking in abusive language.”

In reply, the Respondent no. 3 in para 11 of the affidavit in reply, has stated that:-

“11. With reference to Para 4.7, I say and submit that the contents of this Para is not true and correct and it is denied in toto. In the Preliminary Inquiry not only applicant mentioned exhibit-c witnesses but also eye witnesses examined and D.E initiated against applicant and offence is under investigation which registered against the applicant.”

From this, it is clear that the Respondents have not been able to counter the assertion of the Applicant that none of the witnesses cited in the D.E against him have any direct knowledge as to whether the Applicant really made the alleged conversation. None of them had actually seen or heard the Applicant doing so. The place of utterances and before whom such utterances were made is also not known to any of the witnesses.

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8. From the affidavit in reply, it emerge that the Respondent no. 3 has acted on the basis of 'secretly intercepted conversation' of the Applicant. There is no witness who actually saw and heard the Applicant making the alleged conversation. There is nothing on record to suggest the date and place where this alleged conversation took place. It is also not clear whether the Applicant was talking on his land line phone or mobile phone to someone, when the conversation was secretly intercepted by D.C.P Smt Gite, or it was intercepted by someone else, who sent the audio clip to Smt Gite. As Smt Gite had received the audio clip on her mobile phone, she must be aware of the identity of the sender of the audio clip. In that case, such a person would be the most important witness in the D.E and criminal case against the Applicant. Why the identity of the sender of the audio clip is not disclosed by Smt Gite is not explained. In any case, such interception will be totally illegal against the Indian Telegraph Act and Rules.

9. There could be another scenario, that alleged conversation/speech of the Applicant was recorded by some unknown person on his mobile phone or otherwise when the Applicant made that alleged conversation/speech before an audience. The audio-clip of the same was sent by that person to D.C.P Smt Gite. The Respondents, in that scenario could have ascertained the date, place and audience before which

the alleged conversation took place by interrogating that unknow person, whose identity appears to be known to Smt Gite. However, the identity of the sender of audio-clip is not disclosed for some reason, and as a result, the Respondents have not made any efforts to procure direct evidence against the Applicant. The failure of the Respondents to send the Applicant for medical examination, when he was allegedly under the influence of intoxicating substance on duty on 12.4.2016 is also not explained by the Respondents. There is no reply to the allegation of the Applicant that audio clip is fabricated, while forensic examination could have decided the matter decisively. It is quite clear, that the while case against the Applicant is based solely on the audio-clip, which could have been authenticated, but the Respondents have failed to do so, at least till now. There is no direct evidence that the Applicant made the conversation, which is recorded in the audio-clip. There is no material on record to show when and where the Applicant made the utterances. There is no material on record to show whether this conversation was private or it was made in a public place. In short, there is no credible material on record to support the charges made in the charge sheet in the D.E against the Applicant.

10. In the F.I.R filed by Smt Gite, there is no disclosure regarding the source from which she received the audio-clip. There is no allegation that the alleged

conversation of the Applicant was made in a public place, or before a public audience. If the conversation, for the sake of argument, is accepted to be made by the Applicant, in my opinion, it will not be sufficient to start D.E against him unless, it is proved that it was made in a public place or before a public audience. Complainant Smt Gite is apparently not in a position, to disclose the identity of the person, who had sent her the audio-clip. She has not disclosed his identity for reasons best known to her. I do not see as to how such stringent action can be taken against a senior officer, without making any efforts to collect credible evidence against him. Statements of witnesses in Preliminary Enquiry do not inspire any confidence, as they are identically worded and do not disclose any personal knowledge of the alleged conversation. At the most, those witnesses can be said to have recognized the voice of the Applicant in the audio-clip.

11. In the present Original Application, the Applicant has challenged order dated 1.6.2016 placing him under suspension. Criminal complaint against the Applicant is still under investigation. However, the Respondents have not made any disclosure in the affidavit in reply regarding progress made in the investigation. The material disclosed in the F.I.R is the same on which the D.E is initiated. However, that material by no stretch of imagination can be held to be

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sufficient to pass order of suspension of the Applicant, where there is no direct or credible evidence against the Applicant. Even the manner in which the audio-clip was obtained raises a lot of questions. The impugned order does not appear to be sustainable. It is arbitrary, unreasonable and not based on any credible material.

12. Having regard to the aforesaid facts and circumstances of the case, the order dated 1.6.2016 passed by the Respondent no. 3 placing the Applicant under suspension is quashed and set aside. The Original Application is allowed accordingly with no order as to costs.

The learned Advocate for the Applicant has filed pursis on 28.7.2016 requesting that suo-moto proceedings under the Contempt of Court Act, 1971, may be initiated against 'the concerned'. He probably wants to start proceedings against the learned Presenting Officer and the Respondents. Though, there was delay in filing affidavit in reply by the Respondents, but the same was nevertheless filed on 28.7.2016. I do not find that it can be inferred from the material on record that the Respondents deliberately attempted to delay the proceedings beyond the date of superannuation of the Applicant. I do not find any impropriety in the conduct of the learned Presenting Officer. The request of the



learned Advocate for the Applicant in this regard is rejected.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 29.07.2016

Dictation taken by : A.K. Nair.

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