

## **State Of Maharashtra And Another vs Madhukar Narayan Mardikar on 23 October, 1990**

**Equivalent citations: AIR1991SC207, [1991(61)FLR688], JT1990(4)SC169, (1991)IILLJ269SC, 1990(2)SCALE849, (1991)1SCC57, 1991(1)UJ109(SC), AIR 1991 SUPREME COURT 207, 1991 (1) SCC 57, 1991 LAB. I. C. 207, (1991) 1 SERVLJ 164, 1991 SCC(CRI) 1, (1990) 4 JT 169 (SC), 1991 (1) UJ (SC) 109, 1991 CRILR(SC MAH GUJ) 186, 1994 SCC (L&S) 761, (1990) 61 FACLR 688, (1991) 1 LABLJ 269, (1991) 1 RECCRIR 579, (1991) 1 SERVLR 140, (1994) 27 ATC 195, (1990) 2 CURLR 778, (1991) 1 BOM CR 238**

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**Bench: K. Jagannatha Shetty Shetty, A.M. Ahmadi**

ORDER

A.M. Ahmadi, J.

1. The respondent, Madhukar Narayan Mardikar, was serving as a Police Inspector, Bhiwandi Town Police Station in District Thana of Maharashtra State in November 1965. On 13th November, 1965, between 8.15 and 8.45 p.m. he allegedly visited the hutment of one Banubi w/o Babu Sheikh in uniform and demanded to have sexual intercourse with her. On her refusing he tried to have her by force. She resisted his attempt and raised a hue and cry. Her husband and neighbours collected outside the hutment. The hutment was about a furlong away from the Police Station and about 100 yards from Kuwari's Bungalow. After people from the vicinity collected at the place of occurrence the respondent rushed to Kuwari's Bungalow and telephoned the Police Station to rush police aid. PSI Ghosalkar who received the phone call rushed to the place of occurrence in a police jeep accompanied by PSI Wadekar and other policemen. On reaching the scene of occurrence they found the respondent in uniform standing at some distance from the hutment of Banubi. They also saw an agitated Banubi near her hutment. The respondent directed that the woman be taken to the Police Station as she had abused him. She was taken on foot to the Police Station by Head Constable Kulkarni and Police Constable Desale. The respondent and others returned to the Police Station in the jeep.

2. It appears that on 15th November, 1965 Banubi made a written complaint about the incident to the District Superintendent of Police. A preliminary enquiry was instituted. In the course of the preliminary enquiry detailed statements of several witnesses including Banubi were recorded. The

statement of the respondent was also recorded. On the conclusion of the preliminary enquiry the respondent was charge-sheeted. The charge of perverse conduct was levelled against him on the following two grounds, namely:

- (1) On 13.11.1965 between 20.15 to 20.45 hours, you, Police Inspector Shri M.N. Mardikar, then attached to Bhiwandi Town Police Station (Thana District) visited alone the house of one Banubi w/o Babu Sheikh for the purpose of having illicit intercourse with her.
- (2) In order to suppress the above fact, you prepared false documents and made entries in the Station Diary with the help of your subordinates to show that you had carried out a prohibition raid in and near her house around that time.

The Superintendent of Police, Thana, was appointed an Inquiry Officer to conduct the Departmental Enquiry. The respondent filed a detailed written statement in answer to the charges levelled against him. Oral as well as documentary evidence was adduced by the department as well as the respondent. On the conclusion of the said proceedings the Inquiry Officer submitted a detailed report holding both the charges as proved and recommended the dismissal of the respondent. The Inspector-General of Police on an examination of the report prima facie concurred with the findings recorded by the Inquiry Officer and directed notice to issue to the respondent to show cause why he should not be dismissed from service. The respondent filed a detailed reply to the second show cause notice. After taking the same into consideration the Inspector-General of Police ordered his dismissal. The respondent filed an appeal against the said order of dismissal which was partly allowed. It was held that having regard to the length of service, put in by the respondent, the punishment of dismissal from service should be replaced by removal from service. It was also stated that if the respondent so desired he could apply for compassionate pension. Feeling aggrieved by this order the respondent approached the High Court of Bombay, Nagpur Bench, Nagpur, with a Writ Petition, Special Civil Application No. 300 of 1968, under Articles 226/227 of the Constitution. The Division Bench of the High Court quashed the impugned order of removal on the ground that the respondent was denied a reasonable opportunity to meet the charges levelled against him as the department had failed to supply him with copies of certain important documents having a bearing on the charges levelled against him. The Division Bench also observed: "on the material on record it does not appear to us that reasonably a finding of guilt in respect of the charges framed against the petitioner could be arrived at". The impugned order of removal was thus quashed. The State of Maharashtra feeling aggrieved by the said order has approached this Court by way of Special Leave under Article 136 of the Constitution.

3. As stated earlier the case against the respondent was that he had visited the hutment of Banubi on the night of 13th November, 1965 all alone in police uniform and had tried to ravish her. The respondent's version was that he had raided her hutment on receipt of information that she was dealing in illicit liquor and although nothing incriminating was found from her house, some articles like a rubber tube, a bottle, etc., containing country liquor were found from a nearby place which were attached as unclaimed property. In the course of evidence recorded at the Departmental Enquiry it was also brought out that Banubi was a woman of easy virtue and was having extra

marital relationship with one Behram Irani, the Manager of Bhiwandi Talkies. She admitted that she was the mistress of that person. Evidence was also led to show that she was known as an award (vagrant) in the locality. The find of liquor from near her hutment had upset her and in order to escape from the clutches of law she had filed a false complaint against him on 15th November, 1965. The respondent further contended that a woman with such antecedents could stoop to any level and it would be hazardous to rely on her version.

4. At the Departmental Enquiry several witnesses including Banubi and her husband were examined. Banubi and her husband stuck to their version and no serious infirmity could be brought out in their cross-examination. The Inquiry Officer was of the view that there was no reason or motive for Banubi to falsely involve the respondent. Since Banubi was a woman of questionable repute she would be slow to falsely implicate a Police Officer and thereby incur the wrath of the entire police force of the Bhiwandi Town Police Station within whose jurisdiction she resided. If she and her husband were bootleggers as alleged by the respondent we find it difficult to believe that she would falsely involve a police officer who had not made out any case against her. If nothing incriminating was found from her hutment during the raid there was no reason for her to abuse the respondent and create a scene attracting a crowd. It, therefore, does not appeal to reason to hold that Banubi had falsely implicated the respondent. The learned Counsel for the appellant-State was, therefore, right in contending that this was not a case of no evidence and the High Court ought not to have interfered with the finding as if it were a court of appeal.

5. The evidence tendered at the enquiry also shows that PSI Wadekar was on patrolling duty between 7 p.m. and 8 p.m. with Police Constables Desale, Kadam, Kumbhar, Jadhao and Sakpat. They had raided the house of one Jagdamba prashad Ramadhar Pande on Kalyan Road at about 7.30 p.m. and had attached two bottles of liquor. After completing the formalities of that case they returned to the Bhiwandi Police Station at about 8 or 8.15 p.m. PSI Ghosalkar Was Sitting outside the Police Station while the roll-call was being taken when he received a phone call from the respondent asking him to rush with a police party to Kuwari's Bungalow as there was "some serious trouble". He along with PSI Wadekar and others, namely, Patil, Kulkarni, Desale, Bahiram and Sakpal left in a jeep for the scene of occurrence. On reaching there they found a crowd with Banubi abusing the respondent who was standing at some distance all alone On seeing the police party the respondent directed that Banubi be taken to the Police Station. She was taken to the Police Station on foot by Head Constable Kulkarni and Police Constable Desale. Two things clearly emerge from the above evidence, namely, (i) that the police jeep was not available for use by the respondent till it returned from Kalyan at about 8.15 p.m., and (ii) which the police party comprising PSI Ghosalkar and others reached the scene of occurrence they found a crowd near the hutment of Banubi with the respondent standing at some distance all alone. This is clear from the evidence of Sub-Inspectors Ghosalkar and Wadekar and their subordinates Patil, Kulkarni, Desale, Bahiram, Sakpal and Jeep driver Shinde. It is also clear from their version that Police Constables Desale, Kadam and others had accompanied PSI Ghosalkar in the jeep towards Kalyan road and had returned to the police station at about 8.00 or 8.15 p.m. by which time the respondent had left. They could not have, therefore, accompanied the respondent to raid the hutment of Banubi. This evidence rules out the defence version that the respondent had gone to the hutment of Banubi at about 8.15 p.m. to carry out a prohibition raid. An officer of the rank of a Police Inspector would not ordinarily go all alone to

carry out a petty prohibition raid. It is also difficult to believe that Banubi who was herself living in a glass house would abuse the respondent knowing full-well that she would thereby antagonise the entire police force which could make her life miserable. If this part of the evidence is believed, and we see no reason to doubt it, the respondent's version must be ruled out as a concoction put forward to cover his misdeed. In that case the panchayats and the entries in the Station Diary become suspect.

6. It is true that initially Police Constable Desale and Kadam supported the respondent in their statements recorded on 26th November, 1965 during the preliminary enquiry. However, on their realising that they would be in trouble if they supported a false version they subsequently made a clean breast and stuck to that version in their evidence recorded during the formal enquiry. We have perused their evidence and we are inclined to think that they disclosed the truth in their evidence. The evidence also discloses that when the jeep returned to the Police Station from Kuwari's Bungalow it did not carry any prohibition articles therein. This is also clear from the evidence of Head Constable Jadhao who was at the Police Station when the jeep arrived. Therefore, the story that certain articles containing liquor were attached from near the hutment of Banubi under a panchnama does not appear to be correct. In view of all this evidence the Inquiry Officer was right in upholding Banubi's version and in concluding that the panchnama and the entries made in the Station Diary were intended to cover up the misdeed of the respondent and were made by his subordinates at his behest. We, therefore, find it difficult to agree with the High Court that on the material on record a finding of guilt could not reasonably be arrived at.

7. The High Court, while conceding that it has no jurisdiction to sit in appeal over the decision of a domestic tribunal and is not entitled to reappraise the evidence, fell into an error in doing just that under the guise of examining the evidence to ascertain if the respondent was prejudiced on account of the failure of the department to provide him with the notebooks of Desale, Wadekar, Kadam and Sakpal dated 13th November, 1965 and the logbook of the jeep of even date. It is indeed true that the respondent had asked for the aforesaid documents since the commencement of the Departmental Enquiry and also in the course thereof. He was, however, informed that the original notebooks of the said four policemen as well as the logbook of the jeep were not traced. However, copies of the extracts from the notebooks of the said four policemen taken out earlier and sent to the Anti-Corruption Bureau during the preliminary enquiry were supplied to him. As far as the logbook is concerned evidence of the jeep driver was tendered to show that no entry about the visit from the Police Station to Kuwari's Bungalow was actually made on account of the distance being short. Be that as it may, the fact remains that the respondent was furnished with copies of extracts from the notebooks of the said policemen and they were also offered for further cross-examination. In the course of cross-examination of Police Constable Desale, the witness evaded a certain question by stating that "without seeing my original notebook I cannot say if I have made the entries regarding the duties performed on 13.11.65 and 14.11.65 in the notebook". He, however, admitted that the transcript from his notebook was correct but he could not say if the respondent had countersigned the entry of 13.11.65. The High Court has attached too much importance to this evasive reply given by Police Constable Desale and has come to the conclusion that non-supply of the original notebooks had prejudiced the defence. If the original notebooks are missing and if the transcripts prepared by the witnesses earlier are supplied, the department cannot be accused of deliberately

suppressing evidence. In such a situation the evidence has to be evaluated bearing in mind the fact that the original notebooks and the logbook of the jeep are missing. The non-supply of the original notebooks and the logbook cannot, in the circumstance, efface the overwhelming evidence, both direct and circumstantial, tendered during the Departmental Enquiry. We are of the view that there is sufficient evidence on record to return a finding of guilt against the respondent.

8. The High Court Observes that since Banubi is an unchaste woman it would be extremely unsafe to allow the fortune and career of a Government Official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy with another person. She was honest enough to admit the dark side of her life. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard. At the most the officer called upon to evaluate her evidence would be required to administer caution unto himself before accepting her evidence. But in the present case we find that her evidence is not only corroborated in material particulars by the evidence of her husband but also by the evidence of PSI Ghosalkar and other members of the police party who had accompanied him on receipt of a phone call from the respondent. As pointed out earlier Banubi who was herself living in a glass house considering her antecedents could never have behaved in the manner she is alleged to have behaved if the respondent had merely raided her house and drawn up a nil panchnama. In that case she would not have approached the District Superintendent of Police at the earliest opportunity and would not have lodged a complaint of misbehaviour against the respondent. We, therefore, find it difficult to agree with the High Court that merely because Banubi is a woman of doubtful reputation it is unsafe to rely on her testimony. We have carefully examined the evidence tendered before the Inquiry Officer and we are satisfied that the High Court was completely wrong in concluding that her evidence was not corroborated in material particulars by independent evidence. We are afraid that the High Court embarked upon a reappraisal of the evidence as if it were silting in appeal against the decision of the departmental authorities. Its reappraisal of the evidence is also unsustainable.

9. For the above reasons we set aside the order of the High Court and restore the order of removal from service passed by the appellate authority and direct that it be given effect to in accordance with law. We, however, make it clear that if in the meantime the respondent was re-instated in service pursuant to the High Court's order, the salary and allowances paid for actual duty rendered on such re-installment shall not be liable to be refunded. Except for the same the rest of the consequences of the removal order will fall on the respondent. The appeal is allowed accordingly with costs.