

# **Advocate's Statements During Remand Protected by Privilege: Bombay High Court Quashes FIR Under Section 79 BNS**

Citation: 2024:BHC-AS:48668-DB

Judgment Date: 09th December, 2024

Advocate Ratnadeep Ram Patil filed a writ petition under Section 528 of the Bharatiya Nagrik Suraksha Sanhita, 2023 read with Article 226 of the Constitution of India, seeking to quash the FIR registered against him under Section 79 of the Bharatiya Nyaya Sanhita, 2023. The FIR alleged that Patil had insulted the modesty of a woman during the remand hearing of his clients.

## **Background**

Patil was representing Vaishali Koli and her husband Santosh, who were accused

of financial fraud. During the remand proceedings, Patil, based on his client's prior online complaint, argued that the complainant woman had connections with a police officer and was using those connections to threaten his clients. He also used a derogatory term to refer to the complainants. The woman filed a complaint with the magistrate, who advised her to pursue legal recourse. Subsequently, she filed an FIR with the Panvel City Police Station.

## **Petitioner's Arguments**

Patil argued that his statements during the remand hearing were made in good faith, in the course of his professional duty to defend his clients, and based on instructions from his client. He relied on the legal principle of "privilege," which protects statements made by advocates during judicial proceedings. He cited the

case of **State of Haryana Vs. Bhajan Lal**, AIR 1992 SC 604, arguing that when no offense is prima facie made out, an accused should not be subjected to trial.

## **Court's Analysis**

The Court referred to Section 79 of the BNS, 2023 and highlighted the essential ingredients of the offense: intention to insult the modesty of a woman, the insult being caused by words, sounds, gestures, or exhibiting an object, and intrusion upon the privacy of the woman. The Court, referring to **State of Punjab Vs. Major Singh**, AIR 1967 SC 63, emphasized that the intention or knowledge of the offender is a crucial ingredient in determining whether the modesty of a woman has been outraged. The court also cited **Varun Bhatia Vs. State & Anr.**, 2023 SCC OnLine Del 5288, which emphasized the

importance of context in determining intention.

The Court observed inconsistencies between the complaint made to the magistrate, which only mentioned the use of a derogatory term, and the subsequent police complaint that included the allegation about the illicit relationship. The Court also noted the absence of any personal malice or intention to insult on the part of the petitioner.

## **Rationale**

The court relied on the principle of advocate privilege and the case of **Navin Parekh Vs. Madhubala Shridhar Sharma**, 1992 Mh.L.J. 1409, emphasizing that advocates should be able to represent their clients effectively without fear of prosecution, provided their actions

are in good faith and relevant to the proceedings.

The Court found that the petitioner's statements were protected under the principle of "privilege" as they were made in good faith, during judicial proceedings, and were relevant to the case he was arguing.

### **Excerpt**

"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."

"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."

### **Points to Remember**

- The judgment highlights the importance of advocate privilege in judicial proceedings.

- The court emphasized the need for a contextual analysis while determining the intention of an accused.
- The decision underscores the need for consistency in allegations, particularly in sensitive cases.

**Author:** Adv. Sagar Badade (सागर बडदे)

**Website:** [LegalCell.org](https://LegalCell.org)

