

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPLICATION NO. 808 OF 2025**

Mr. Hitesh Suresh Borse.  
Age: 45 years, Occ.- Service,  
R/at- 504, Parth Darshan Apartment,  
Survey No. 16, Ambegaon Pathar,  
Pune – 411046.

... Applicant.

V/s.

1. State of Maharashtra,  
Through Bharti Vidyapeeth  
Police Station.

2. Mrs. Rajshree Satish Kopnar  
Age: 30 years, Occ.-Agriculture,  
R/at- Survey No.15, Parth Darshan  
Apartment, Ambegaon Pathar,  
Tal. Haveli, Dist. Pune.

... Respondents

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Mr. Viraj Shelatkar a/w Mr. Yogesh Birajdar i/b Mr. Swapnil Wankhade  
Advocates for Applicant.  
Mr. A. A. Palkar, APP for the Respondent-State.

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**CORAM : RANJITSINHA RAJA BHONSALE, J.**

**RESERVED ON : 19<sup>th</sup> JANUARY, 2026.**

**PRONOUNCED ON : 10<sup>th</sup> APRIL, 2026.**

**JUDGMENT :-**

- 1) Heard Mr. Viraj Shelatkar learned Advocate for the Applicant and Mr. Amit Palkar learned A.P.P. for the State.
- 2) By the present Application, the Applicant seeks quashing of the FIR bearing No. 854 of 2023 dated 31<sup>st</sup> December, 2023 registered with the

Bharti Vidyapeeth Police Station, Pune under Sections 504, 506, 509 of the Indian Penal Code, 1860.

3) As per the FIR, it is the contention of the Respondent No.2 that, she has been working in the Parth Darshan Apartment as a watchman. That, she stays along with her family within a premises of the Parth Darshan Apartment. That, the husband of the Respondent No. 2 works in the Pune Market Yard, and leaves for the job early in the morning at 3.00 a.m. and returns at 2 p.m. As a part of the duty, the Respondent No. 2 undertakes cleaning work and monitors the supply of water from the main society tank. For the purposes of water supply, she is required to go to the terrace and release the water as per the said timings. The keys of the terrace are generally with the Respondent No. 2. However, on 30<sup>th</sup> December, 2023 the Applicant had taken the keys of the terrace.

4) The Respondent No. 2 has further contended that on 31<sup>st</sup> December 2023 at 7.00 a.m. in the morning, she along with her son Samarth was going to terrace to release the water. The keys to the terrace were with Applicant, who stays in flat No. 504. That, she went to the said flat and rang the door bell. That, when the door was opened by the Applicant, the Applicant was in a completely naked state. On realizing the same the Respondent No. 2 moved aside and extended her hand and asked for the keys of the terrace. As soon as the key was handed over to the Respondent No. 2, she ran to the terrace. After releasing the water she went to her house. At about 8.00 a.m. Respondent No. 2 again returned to terrace to close the water supply. That,

when she was returning from the terrace the Applicant came up to her and tendered his apology and stated that he would not repeat the said behavior in the future. The Respondent No. 2 then informed her sister-in-law Mahananda of the incident so also to the other people of the society. When the Applicant was confronted by Mr. Satish Pilane, the chairman of the society, the Applicant in response picked up the Fawda (Shovel) for assaulting the Respondent No. 2. The Applicant also abused the sister of Respondent No. 2. It is in this background the Respondent No. 2 registered the present crime.

5) Learned Advocate for the Applicant submits that, the allegations in the FIR are false, concocted, fabricated and the complaint has been lodged with the ulterior motives only to harass the Applicant and to settle scores arising out of several mismanagement points which have been raised by the Applicant, in respect of the management of the society. That, the society meeting was to be held on the same day i.e. on 31<sup>st</sup> December, 2023 at 11.00 a.m.. Learned Advocate for the Applicant further submits that, no offence as alleged under Section 504, 506 and/or 509 have been made out. That, the allegations in the FIR are baseless and untenable and even if accepted at their face value and considered as entirely true, do not make out case against the Applicant for the alleged offences. That, there were two students who were present at his residence/coaching classes and that their statements have not been recorded.

6) Learned Advocate for the Applicant submits that, to invoke the provision of Section 509 what is required is that the actual gesture or act have

been performed by the Applicant. He submits that, the same has not been stated and therefore FIR cannot be sustained. That, the actual gesture or act performed by the Applicant should be intended to insult the modesty of the women so as to invoke provisions of section 509. Learned Advocate for the Applicant submits that, the statements which have relied upon in the chargesheet are of witnesses who have merely stated that they have come to know about alleged incident from the Respondent No. 2. That, witnesses are not direct eye-witness to the alleged incident. That, the shovel has not been seized.

7) Learned APP submits that, on a bare reading of the statement of the Respondent No. 2, it is clear that the ingredients as required to invoke the sections as mentioned in the FIR including section 509 are available and have been aptly stated. That, the sections have been properly invoked. That, the most important evidence is of the Respondent No. 2 which is clear and makes out a case against the Applicant.

8) Section 509 of the Indian Penal Code reads as under;

*“509. Word, gesture or act intended to insult the modesty of a woman.- Whoever intending to insult the modesty of any woman, utters any word, makes any sound, or gesture, or exhibits any object, 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.”*

9) Perusal of Section 509 of the IPC, would indicate that to make out an offence under Section 509 of the IPC, the following ingredients are

required.

- (i) There should be an intention to insult the modesty of women.
- (ii) The same may be done by any word, sound or gesture or by exhibiting any object.
- (iii) The actions in clause (ii) should be done with the intention that the word or sound is heard or that the gesture or object is seen by the women or intrudes upon the privacy of the women.

To attract Section 509 of the IPC what is required would be the intention which can be gathered from the surrounding circumstances of the acts of the offender. The act, should be such that, it is heard or seen by the women or intrudes upon the privacy of the women.

10) In the case of *Joseph Paul de Sousa Vs. State at the instance of Crime Branch and Ors.*, reported in 2024 SCC OnLine Bom 2719 : (2024) 3 AIR Bom R (Crl) 889 this Court has observed that:-

**“8.13.** *In the case of M. M. Harries v. State of Kerala (supra) the Learned Single Judge, while holding that a bunch of anonymous letters received by a woman containing offensive and foul words, outraging her modesty falls within the scope and ambit of the offense under Section 509 of the I. P. C., observed as follows :*

*“8. ...But, what does the expression 'gesture' actually mean? Lord Denning, an English Judge cautioned in Seaford Court Estates's case (vide [1949] 2 All ER 155) that 'the English language is not an instrument of mathematical precision'. To an Indian Judge, English is even more intrinsic being a foreign language. So, to understand the real meaning of an English word, I shall safely depend upon the dictionary first.*

*9. A reference to the dictionary is inevitable in this case because the word 'gesture' not defined under the Penal Code, 1860. The*

meaning of the word 'gesture' as per Concise Oxford Dictionary, eighth edition is, "a significant movement of a limb or the body; the use of such movements esp. to convey feeling or as a rhetorical device; an act to evoke a response or convey intention". As per Collins Cobuild 'English Dictionary for advanced learners' third edition, 'gesture' is something that you say or do in order to express your attitude or intentions, often something that you know will not have much effect". As per Law Lexicon, the word 'gesture' means "a posture or movement of the body; an action expressive of the sentiment or passion of intended to show inclination or disposition".

**10.** It is thus clear from the above discussion that the word 'gesture' refers not merely to body signs. Though the word 'gesture' is ordinarily used to mean movement of the limbs or body to convey a person's feelings, it can also connote an act done by a person to convey his intentions. According to dictionary meaning, an act done by a person to express his attitude or intentions also is a 'gesture'. A person can express his attitude or convey his intentions in a number of ways. For example, by speaking, giving, looking, writing etc., etc. In that sense of the word, a person can make a gesture by doing an act without involving any body signs.

**18.** .....Later, legislature found that a woman must be protected not only from physical aggressions made in the course of outraging her modesty, but she should also be shielded from various other acts which do not involve even a touch. Legislature was quite aware that a woman's modesty can be insulted or outraged in various ways. A mere word, a wink, a touch or even a look would suffice to insult the modesty of a Woman. Physical advances may not be necessary in all cases. Everything depends on the intention of the mischief-maker and the manner in which he conveys his intentions. It is evident that legislature intended that any aggression into a woman's modesty whether by any word, deed, touch or look need be curbed and deterred.

**19.** That is why even a verbal attack on a woman, a gesture and other acts stated in Section 509 I.P.C. were brought under the said Section. It is clear from a reading of Section 509 I.P.C. that by introducing the said provision, legislature intended that any sort of

*aggression into a woman's modesty whether by any word, deed or act should be deterred, as evident from the title to the Section itself. Thus, the acts which are done intending to insult the modesty of a woman which may not necessarily involve even any physical advances are also brought within the sweep of a separate provision viz., Section 509 I. P. C. ....*

11) The Hon'ble Supreme Court in the case of *Ramkripal s/o Shyamlal Charmakar V. State of Madhya Pradesh* reported in (2007) 11 SCC 265 in paragraph 8 has observed that:-

*“12. .... As indicated above, the word ‘modesty’ is not defined in IPC. The Shorter Oxford Dictionary (3<sup>rd</sup> Ed.) defines the word ‘modesty’ in relation to a woman as follows:*

*‘Decorous in manner and conduct; not forward or lewd; shamefast; scrupulously chaste.’*

*13. Modesty is defined as the quality of being modest; and in relation to a woman, ‘womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct’. It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions.*

*14. Webster’s Third New International Dictionary of the English language defines modesty as ‘freedom from coarseness, indelicacy, or indecency: as regard for propriety in dress, speech, or conduct’.....*

*15..... From the above dictionary meaning of ‘modesty’ and the interpretation given to that word by this Court in Major Singh case (AIR 1967 SC 63 : 1967 Cri LJ 1) the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. The above position was noted In *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*<sup>3</sup>.”*

12) The Hon'ble Supreme Court in the case of *State of Punjab v. Major Singh* reported in AIR 1967 SC 63 has observed that the ultimate test for ascertaining whether modesty has been outraged is whether the action of the

offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman.

13) The Hon'ble Supreme Court in the case of *Madhushree Datta v. State of Karnataka and another* reported in (2025) 3 SCC 612 has observed that:-

*27. For ascertaining whether, prima facie, the provision of Section 509IPC was attracted, it is essential to first understand the meaning of the term "modesty", to determine whether modesty has been insulted. While modesty is not explicitly defined in IPC, this Court has addressed the essence of a woman's modesty in the decision in Ramkripal v. State of M.P.<sup>3</sup> Excerpts from the decision read as under : (SCC pp. 266-67, para 7)*

*"7. ... '12. What constitutes an outrage to female modesty is nowhere defined in IPC. The essence of a woman's modesty is her sex. 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. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex.' "*

*(emphasis supplied)*

*28. Further, this Court while discussing the test for outraging the modesty of a woman under Section 509IPC in Rupan Deol Bajaj v. Kanwar Pal Singh Gill<sup>4</sup>, observed as under : (SCC p. 206, para 15)*

*"15. In State of Punjab v. Major Singh<sup>5</sup> a question arose whether a female child of seven-and-a-half months could be said to be possessed of "modesty" which could be outraged. In answering the above question Mudholkar, J., who along with Bachawat, J. spoke for the majority, held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354IPC. Needless to say, the "common notions of mankind" referred to by the learned Judge have to be gauged by contemporary societal standards. The other learned Judge (Bachawat, J.) observed that the essence of a woman's modesty is*

*her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of “modesty” and the interpretation given to that word by this Court in Major Singh case<sup>5</sup>- it appears to us that the ultimate test for ascertaining whether modesty has been outraged, is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman.”*

14) The Hon’ble Supreme Court in the case of *Central Bureau of Investigation Vs. Aryan Singh And Ors.*, reported in (2023) 18 SCC 199, has held that, the High court cannot conduct a mini trial for appreciation of evidence on record, while dealing with an application under Section 482 of the Cr.P.C., as it is a mini trial and consider the applications as if those are against the judgment and Order of the trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of criminal proceedings, while exercising powers under Section 482 of the Cr.P.C. the Court is not required to conduct a mini trial.

15) The Hon’ble Supreme Court in the case of *Priyanka Jaiswal Vs. The State of Jharkhand and Ors.*, reported in (2024) SCC Online SC 685, while dealing with the similar issues, has held as follows:

*“13. ....This Court in catena of Judgments has consistently held that at the time of examining the prayer for quashing of the criminal proceedings, the court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini trial nor enter into appreciation of evidence of a particular case. The correctness or otherwise of the allegations made in the complaint cannot be examined on the touchstone of probable defence that the accused may raise to stave off the prosecution and any such misadventure by the Courts resulting in proceedings being quashed would be set aside.....”*

16) Perusal of the FIR, in the present case would indicate that, the specific allegation in the FIR of Respondent No. 2 is that, when she went to collect the key from the flat of the Applicant, and when Applicant opened the door, the Applicant was fully naked. The Applicant, went in the house, to get the keys and returned in the same state and after looking at the Respondent No. 2, made indecent gestures. If the conduct of the Applicant, as alleged in the FIR is considered, it clearly fits in and makes out an offence of Section 509 of the IPC. The conduct of the Applicant, in opening the door in a naked state is clearly indicative of and demonstrates the required intent to insult the modesty of a woman, which is the requirement to invoke Section 509 of IPC. The said conduct, in my opinion, is enough to show the state of mind and intention of the Applicant to insult the modesty of a woman with the conduct and gesture. The act, prima facie appears to be intentionally undertaken so as to be seen by a woman and insult the modesty of a woman. The act prima facie, can be clearly perceived to shock the decency of a woman. A case under Section 509 of the Indian Penal Code is prima facie made out, as the door is said to have been opened by the Applicant when he was in a completely naked state and the intention continued with the act of getting the keys and handing them over to the Respondent No. 2, in the same naked condition. The said act of the Applicant clearly and amply demonstrates the intention and knowledge of the Applicant. The said act, conduct and gesture clearly affects the dignity of a woman, shocks the sense of decency of a woman and clearly insults the modesty of a woman.

- 17) A conjoint reading of the FIR and Section 509 of the IPC, leaves me with no doubt that, a case under Section 509 of the IPC is also made out. What the Applicant places before the Court is his defence. This Court ought not to consider the defence of the Applicant, while considering the application under Section 482 of the Code of Criminal Procedure. Perusal of the statement of the Respondent No. 2, indicates that, an offence as alleged in the FIR is clearly made out. There is substance in the FIR and *prima facie* it clearly discloses the alleged offence under Section 509 of the IPC. The Applicant has raised his defence which can only be aptly tested and tried at the trial. The FIR makes out a *prima facie* case and that the defence raised by the Applicant is required to be raised and considered at the time of the trial. In view of the aforesaid facts and the law laid down by the Hon'ble Supreme Court, I am of the opinion that a *prima facie* case has been made out against the Applicant.
- 18) In view of the above, the application is dismissed.

**(RANJITSINHA RAJA BHONSALE, J.)**