

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3034 OF 2015

Popat s/o. Nanbhau Markad
and others

APPLICANTS

VERSUS

The State of Maharashtra
and another

RESPONDENTS

...
Mr. Vikram S. Undre, Advocate for the Applicants
Mr. A.V. Deshmukh, APP for the Respondent – State
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**CORAM: S.S.SHINDE &
A.I.S.CHEEMA, JJ.**

Date : 19th June, 2015.

PER COURT:

1] This Criminal Application is filed with following
prayer:

B] This Hon'ble Court may kindly be pleased to
quash and set aside entire proceeding bearing
RCC No. 87/2014 in connection with Charge
Sheet No. 86/2014 dated 29/05/2014 in FIR No.
73/2011 dated 05.06.2011 filed for the offence
under Section 341, 506 [2] of Indian Penal Code
and Section 135 of Bombay Police Act pending

in the court of Ld. Judicial Magistrate of First Class at Washi Dist. Osmanabad.

2] The learned counsel appearing for the Applicants submits that, the charge sheet and FIR filed by the prosecution against the Applicants do not show any *prima facie* involvement of the Applicants in the alleged crime. The prosecution has not brought on record sufficient material – evidence so as to prosecute the Applicants. It is submitted that, there are total 44 Ladies, who are shown as accused persons, without there being any involvement of those Applicants in the alleged commission of offence. It is submitted that, the prohibitory orders issued by the District Magistrate are not widely circulated. Therefore, the learned counsel appearing for the Applicants relying upon the grounds taken in the Application, annexure thereof, and the Judgment of the Bombay High Court, Bench at Aurangabad in Criminal Application No. 4370/2013 in the case of *Balu Bansi Lokhande Vs. The State of Maharashtra and another* decided on 13th November, 2013, submits that, Application deserves to be allowed.

3] On the other hand, the learned APP appearing

for the Respondent – State submits that, the Applicants in breach of the prohibitory orders issued by the District Magistrate have obstructed the traffic on National Highway, and thereby committed offence as alleged against them.

4] We have given careful consideration to the submissions of the learned counsel appearing for the Applicants, and also the learned APP appearing for the Respondent – State. We have carefully perused the contents of the First Information Report, and also other documents placed on record by the Applicants. It appears that, during the period when the Applicants along with other co-accused obstructed the traffic on National Highway, prohibitory orders issued by the District Magistrate, Osmanabad, under Section 37 [1] [3] of the Bombay Police Act, 1951, were in force. It appears that, the person who was leading the mob, was served with notice under Section 149 of the Criminal Procedure Code, stating therein that, there are prohibitory orders, issued by the District Magistrate, Osmanabad, and the mob should not obstruct smooth traffic on Highway. In spite of prohibitory orders were in force, from reading allegations in the FIR and charge sheet it appears that, in breach of

said prohibitory orders, the Applicants along with other co-accused, near Saramkundi Phata on NH 211 [Solapur-Dhule] on 5th June, 2011, in between 11.15 to 12.45 by forming unlawful assembly obstructed and stopped the traffic of the vehicles on the said road. It appears that, the accused were extending threats to take life of persons who were passing through said road, at the relevant time.

5] In that view of the matter, upon perusal of the contents of the FIR and charge sheet, the prosecution agency has collected sufficient material – evidence so as to proceed with the trial. In that view of the matter, in our considered view, the Application deserves no consideration.

6] The reliance placed by the learned counsel appearing for the Applicants in the case of *Balu Bansi Lokhande [supra]*, is wholly misplaced in the facts of the present case, inasmuch as in the facts of that case, the High Court observed in para 10 that, there was indeed no wrongful restraint, with deliberate attempt voluntarily to cause any person from proceeding in a particular direction. However, in the present case, as already observed, the prosecution has collected the material, which needs to be tasted during trial.

7] In that view of the matter, Criminal Application stands rejected.

[A.I.S.CHEEMA]
JUDGE

[S.S.SHINDE]
JUDGE

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DDC