

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.392 OF 2012

THE STATE OF MAHARASHTRA)...APPLICANT

V/s.

**MOHAMMAD YASIN MOHAMMAD IBRAHIM)
SHAIKH AND OTHERS)...RESPONDENTS**

Mr.Deepal Thakre, APP for the Applicant – State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 21st AUGUST 2015.

ORAL ORDER :

1 Respondent Nos.1 to 22 herein were prosecuted on the allegation of their having committed the offences punishable under Section 143 IPC, Section 148 IPC, Section 225 IPC , Section 332 IPC, Section 333 IPC, Section 342 IPC, Section 427 IPC, Section 421 IPC read with Section 149 IPC, and Section 3(2) of the Prevention of Damage to Public Property Act, 1984, and Section 135 of the Bombay Police Act. Respondent no.23 was also an accused in the said case, but he reportedly absconded during

the trial, and as such, the trial against him could not proceed. The Ad-hoc Assistant Sessions Judge at Sewree, Mumbai, after holding a trial, came to the conclusion that respondent nos.1 to 22 were not guilty of any of the alleged offences and acquitted them. The State of Maharashtra, being aggrieved by the said order of acquittal, has approached this court seeking leave to appeal from the said judgment and order of acquittal.

2 I have heard Mr. Deepak Thakre, the learned APP, in support of the application. I have gone through the application. I have carefully gone through the impugned judgment and glanced through the notes of evidence, a copy of which is annexed to the application.

3 The prosecution case was as follows :

On 24th October 2007, P.S.I. Paud and P.S.I. Dhumal of Unit No.4 along with staff of Crime Branch, had been to National Market situated at R.A. Kidwai Marg, for making an inquiry into an application that had been received by them. Respondent no.23

Bhullu had been taken in custody by them, supposedly, for an *inquiry* into the application. When they were proceeding towards their office, respondent no.1, who is the uncle of respondent no.23, misbehaved with them and started shouting loudly against the police and caused respondent no.23 to escape. That, the respondents obstructed the police from performing their duty by creating a melee and the members of the mob assembled were shouting that one Vilas Joshi had sent the staff of Crime Branch and that “police ki dadagiri nahi chalegi hum rasata nahi chodege.” The information about this incident was received by Namdev, Senior Inspector of Police, R.A.Kidwai Marg Police Station, and he then rushed to the place. A mob of about 3000 to 3500 had assembled at that place, and the mob started pelting stones towards the police staff. Wrongful loss and damage to the police vehicles was caused. Hurt was also caused to the police personnel. The mob rescued respondent no.23 from lawful custody of the police. On the allegation that the respondents were the members of the said unlawful assembly, they were prosecuted, but as aforesaid, they were acquitted.

4 The learned Judge carefully considered the evidence adduced by the prosecution during the trial. He came to the conclusion that there was no satisfactory evidence to show that there was any case for the arrest of respondent no.23 Bhullu. He observed that, that a case of a cognizable offence was registered against respondent no.23, had not at all been established. He found that the purported arrest of respondent no.23 by the staff of Crime Branch – and not by the local police station i.e. R.A.Kidwai Marg Police Station – was itself illegal. Infact, the learned Judge doubted whether, that respondent no.23 was to be arrested was put forth as a false claim, and that, actually the police wanted to apprehend respondent no.1 illegally and take him away to the Crime Branch office. The learned Judge in this context observed that one Vilas Joshi, who was earlier the Senior Inspector of Police attached to R.A.Kidwai Marg Police Station, had some dispute with respondent no.1, who is a social worker, and the mob felt that there was a possibility of the Crime Branch Officers having been sent by the said Vilas Joshi. The learned Judge further observed that even

assuming that respondent no.23 was really apprehended by PW4 Vaibhav of Unit No.4 of Crime Branch, the said arrest was unauthorized and illegal. The learned Judge was of the view that if this was so, the persons who had assembled there, had a right to inquire as to the cause of the arrest of respondent no.23, and if the taking away of respondent no.23 was obstructed because of the collection of the mob and making inquiry into the cause of arrest, the same would not amount to intentional obstruction to the police in performance of their lawful duty.

5 The learned Judge also observed that respondent no.1 was, admittedly, a well-known social worker in the locality, and under the circumstances, the shop owners and others in that area having gathered to see as to what was happening and why the respondent no.1 was apprehended by the police, could not be ruled out, and that, in that case, all the persons who had assembled there could not be termed as the members of unlawful assembly.

6 The learned Judge also noticed that there was no evidence that any hurt was caused to any of the police personnel, or that any police vehicles were damaged.

7 Thus, the learned Judge, firstly, held that the story put forth by the prosecution, viz., that they had gone for apprehending respondent no.23 on the basis of some application that had been received by them, into which they were making an inquiry, was not believable. Secondly, he held that in the circumstances, the police – much less the officers of the Crime Branch – had no authority to apprehend respondent no.23. He observed that there was absolutely no record to show that respondent no.23 was required by the police in connection with any investigation – or even an inquiry as claimed by the police. It may be added that the concept of such inquiry itself is contrary to law. No case of any cognizable offence had been registered against respondent no.23. The learned Judge, thirdly, observed that there was no evidence against any of the respondents.

8 After going through the evidence adduced during the trial, not only I am unable to see how the reasoning of the learned Ad-hoc Assistant Sessions Judge and the conclusion arrived at by him, can be said to be wrong, but it appears to me that the learned Judge's approach towards the matter was correct. He viewed the matter objectively. The learned Ad-hoc Assistant Sessions Judge has carefully considered the matter, read and appreciated the evidence in a proper manner, and has come to a correct conclusion.

9 There is no merit in this application.

10 The application is rejected.

(ABHAY M. THIPSAY, J.)