

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. WRIT PETITION NO. 4878 OF 2014

Mr. Deepak J. Khankal & others. ... Petitioners.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Mr. Madhusudan Pareek, Advocate for the Petitioners.

Mr. A. R. Patil, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 18th MARCH, 2015

P.C. :

1 Heard learned Advocate for the Petitioners and
 learned APP for the State.

2 The petitioners/applicants are facing trial before
the 38th Court of Metropolitan Magistrate, Ballard Pier,
Mumbai for the offences punishable under sections 143, 147,
149 read with 353 of the Indian Penal Code and also for the
offence punishable under section 37(3) read with section 135
of the Mumbai Police Act. The complainant in the said case is
one - Nallam ShreeRamchandra Prasad. He was working as a
General Manager and Director of New India Insurance
Company Limited (Government of India Undertaking). It

appears that there was some protest by the workers led by some union leaders on the date of incident i.e. on 9th October, 2007. About more than 30 persons were allegedly involved in the alleged incident of assault on the complainant.

3 The first information report was lodged and the F.I.R. for the offences stated herein above was registered. After investigation, charge-sheet has been filed against 15 accused persons. The present petitioners are accused numbers 8 to 15 in the said charge-sheet.

4 An application was made before the learned trial Magistrate for discharge of the petitioners on the ground that there was no material against them inasmuch as their names do not appear in the FIR nor do they appear in any of the statement of the witnesses. The learned counsel Mr. Pareek, appearing for the Petitioners has submitted that the CCTV footage was available and it was taken charge of by the police. However, the same has not been played and a panchanama has not been prepared. Therefore, the police cannot make use of the same during the course of the trial. The petitioners/applicants do not know the contents of the CCTV footage. Its copies are not given to them.

5 The learned additional public prosecutor has submitted that the evidence in the form of memory card and

the identity of the applicants will be established during the course of the trial.

6 After having gone through the record and proceedings and the orders of the learned Metropolitan Magistrate and the learned additional Sessions Judge, one thing is clear that names of the petitioners do not appear either in the FIR or in any of the statements of the witnesses. It is evident that the police are banking upon the contents of the memory card and CD given to them by the complainant. However, it is surprising that the police themselves did not know the contents of the memory card and the CD. I have gone through the chargesheet and I do not find that any memorandum with regard to the contents of the CCTV footage was prepared. Therefore, nobody is clear as to what is there in the memory card. Only because the memory card is seized, it cannot be said that the incident in question is covered in the CCTV footage and that the applicants must be there in the footage. It is abundantly clear that there is no material to frame charge against the petitioners. They deserve to be discharged.

7 Hence, I pass the following order :

- i. The orders passed by the learned Metropolitan Magistrate and the learned additional Sessions Judge are set aside.
- ii. The petitioners are hereby discharged of the offences punishable under sections 143, 147, 149 r/w. Section 353 of the Indian Penal Code and the offence under section 37(3) r/w. Section 135 of the Mumbai Police Act in a criminal case no. 82/PW/2008, pending in the court of Metropolitan Magistrate, 38th Court, Bellard Pier, Mumbai.
- iii. Petitioners bail bonds stand cancelled.

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Writ Petition stands disposed of accordingly.

(JUDGE)

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