

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 393 OF 2015.

Anandrao Bodhiram Mundle and ors. ..vs.. State of Mah. and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr.V.S.Kukday, Adv. for the applicants.
Ms.N.P.Mehta, APP for the State.

CORAM : A.B.CHAUDHARI AND
P.N.DESHMUKH, JJ.
DATED : AUGUST 6, 2015.

Heard leaned counsel for the rival parties.

Learned counsel for the applicants submits by citing the judgment and order dated 14th of July, 2015 of the Division Bench of this Court in Writ Petition No.3924 of 2015 and connected matters, that this court has found that for want of uniform policy throughout the State about use of JCB, Pock land and other heavy machines, damage is being caused to the sand ghats and consequently to the environment, action in some part of the State cannot be taken. The learned counsel, therefore, submits that FIR that was lodged pursuant to the communication made by Tahsildar would be contrary to the said judgment of this Court. He then points out that the said FIR should be quashed in view of the decision cited supra.

The learned counsel further submits that communication issued by non-applicant no.3 – Tahsildar to the applicants is on the basis of oral instructions of non-applicant no.2 – Collector and there is no order of the non-applicant no.2 to this effect and therefore, in the absence of any order no offence is made out under Section 188 of the Indian Penal Code. He further submits that the matter should be adjourned for a week as he wants to cite certain judgments.

We have spent fifteen minutes in hearing the learned

counsel for the applicants and therefore, it is not possible for us to adjourn the matter. We, therefore, reject the prayer for adjournment.

Issue involved in this petition is whether the FIR registered for the offence punishable under Section 188 of the Indian Penal Code on the basis of communication dated 7th of May, 2015 issued by non-applicant no.3 – Tahsildar attracts the ingredients of the said offence.

We have perused the affidavit-in-reply filed by respondent no.4 – Police Station Officer, Paoni where from we have noted that there was agreement between sand ghat owner and the Collector, Bhandara that sand ghat owner will not use JCB or Pock land machines for excavation of sand from the sand ghat without No Objection Certificate from Ground Water Survey and Development Agency (GSDA) and M.P.C.B. We then find that the FIR has been registered on the basis of the communication issued by the public authority, namely, Tahsildar. The communication dated 23rd of February, 2015 (Annexure – 5) pointed out to us from GSDA is only a recommendation and not the No Objection Certificate.

In that view of the matter, looking to the menace of lifting of sand causing danger to the environment in the entire State at times in connivance of the officers concerned, etc. we must discourage the same. We, therefore, find no mistake with the authorities or the Police Station Officer to register FIR under Section 188 of the Indian Penal Code. That being so, we make the following order.

ORDER

Criminal Application (APL) No.393 of 2015 is rejected.

Learned counsel for the applicants has prayed for extension of stay. Prayer is rejected.

JUDGE

JUDGE

Chute.