

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

CRIMINAL WRIT PETITION NO. 657 OF 2011

Manmohansinh Karamsingh Oberai
age 65 yrs, Occ. Social worker,
R/o Osmanpura, Aurangabad
Tq. & Dist. Aurangabad. ...Petitioner.

Versus

1. The State of Maharashtra
through Secretary,
Home Department,
Mantralaya, Mumbai-32.
(Copy to be served on the Public
Prosecutor High Court of Judicature
of Bombay Bench at Aurangabad)
2. The Commissioner of Police,
Aurangabad,
Tq. & Dist Aurangabad.
3. The Police Inspector,
Police Station, City Chowk,
Aurangabad.
4. Mr Kudabakash Alarkha Tadvi,
Ex-Tahsildar/Assistant Returning Officer,
193, Aurangabad (west) Assembly Election
Constituency, At present Special
Land Acquisition Officer, Collector Office,
Osmanabad.
5. Election Commission of India,
Nivarchan Bhavan, New Delhi. ...Respondents..

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WITH

**CRIMINAL APPLICATION NO.4806
IN
CRIMINAL WRIT PETITION NO.657 OF 2011**

...
Advocate for Applicants : Mr C V Thombre
APP for Respondents : Mr A R Kale

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CORAM : V.K. JADHAV, J.
Dated: August 29, 2016
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ORAL JUDGMENT :-

1. Being aggrieved by the common order passed by the 21st Judicial Magistrate First Class, and Jt. Civil Judge (J.D.), Aurangabad below Exh.19 and 22 in S.C.C.No.7494 of 2004, the original accused No.2 has preferred this Criminal Writ Petition.

2. Brief facts, giving rise to the present writ petition, are as follows :-

On 24.8.2005 the Maharashtra State Assembly Election Programme was declared and Code of Conduct was also announced during the period on 24.8.2004 and onwards. The actual election process was to be commenced from 15.9.2004 to 28.9.2004. Even on 15.9.2004 respondent No.2 by exercising powers under Section 37(1) and 37(3) of The Bombay Police Act, 1951 issued the order of prohibition as mentioned in clause A to F. Furthermore, on 10.9.2004 order under section

144 of Code of Criminal Procedure also came to be passed by respondent No.2. On 20.9.2004 when the election date was scheduled for filling of the nomination forms some political leaders came in the office of the Election Officer for submission of their nominations. At that time, followers of those political leaders gave slogans in the office of the Election Officer though aforesaid order under section 37 (1) and 37 (3) of Bombay Police Act, 1951 as mentioned in Class A to F and order under Section 144 of the Code of Criminal Procedure were in force. On the basis of the complaint lodged by the Tahsildar, Sillod Crime No.131/2004 for the offence punishable under section 143, 188 of the Indian Penal Code and Section 135 of the Bombay Police Act came to be registered at Police Station City, Aurangabad. After due investigation, police submitted charge sheet.

3. The learned Special Assistant Public Prosecutor, thereafter, filed an application Exh.19 under section 321 of the Code of Criminal Procedure for withdrawal of the prosecution. It has contended in the said application

that the Special Assistant Public Prosecutor is withdrawing the said case in compliance with the orders of the Police Commissioner, Aurangabad and Assistant Director and Public Prosecutor, Aurangabad. Since the learned Judge of the Trial Court has observed that there is no application of mind independently for withdrawal of the prosecution, the Special Assistant Public Prosecutor again submitted an application at Exh.22, however, the learned Judge of the Trial Court by its impugned order dated 28.6.2011 passed below Exh.19 and 22 rejected the application. Hence, this writ petition.

4. The learned counsel for the petitioner submits that, the allegations have been made in the complaint that large number of followers gathered near the office of the Returning Officer while their leaders were submitting nomination forms and gave slogans in the form that "*they should lead and public will follow them.*" On the basis of these allegations, Crime came to be registered. Learned counsel submits that, the Special Assistant Public Prosecutor after applying his mind

submitted an application Exh.22 and pointed out to the Court that, the offence is not so severe and there was no damage to the public property, as such. Learned counsel submits that even then the Court below has erroneously rejected the application.

5. I have also heard the learned APP for the State.

6. Though, the learned Special Assistant Public Prosecutor has submitted an application for withdrawal of the prosecution on the basis of a communication received by him from the Police Commissioner, Aurangabad and Assistant Director and Public Prosecutor, Aurangabad, it appears from the contents of the application that, he has brought to the notice of the Trial Court by pointing out that the offence is not so severe and there was no damage to the public property in this case.

7. It is well settled that, the sole consideration for the Public Prosecutor when he decided to withdraw from the prosecution is a larger factor of the administration of public justice. The interest of public justice should be the paramount consideration.

8. In the case in hand, large number of followers gathered at the office of the Returning Officer when their leaders were submitting nomination forms. There are no other allegations made in the complaint. Even in the charge sheet role ascribed to the indefinite persons consisting of a large mob only to the extent that the said mob at the time of incident despite the prohibitory orders passed by the authorities, gave slogans in support of their leaders. Except this nothing revealed during the course of the investigation. Thus, in my considered opinion, there is sufficient compliance of the requirement of the provisions of Section 321 of the Code of Criminal Procedure. The learned Magistrate ought to have allowed the application Exh.19/22 and grant permission to Special Assistant Public Prosecutor for withdrawal from the prosecution. Hence, following order is passed.

O R D E R

- I. Criminal Writ Petition is hereby allowed.
- II. The order dated 28.6.2011 passed by the 21st Jt. Civil Judge J.D Aurangabad below Exh.19 in SCC No.7974/2004 is hereby

quashed and set aside as against the petitioner.

III. Application Exh.19 to the extent of the present petitioner is hereby allowed.

IV. The petitioner/original accused no.2 is hereby discharged.

V. Criminal Writ Petition is accordingly disposed of. Rule is made absolute in above terms.

VI. In view of disposal of Criminal Writ Petition No.657/2011, Criminal application No.4806/2015 also stands disposed of.

(V.K. JADHAV, J.)

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aaa/-