

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

CRIMINAL APPLICATION NO.1501 OF 2009

Shri Subhash Prabhakar
alias Panditshet Patil and Others. .. Applicants

Vs

Shri Anant Manya Ambekar and Others. .. Respondents

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Shri R.R. Salvi for the Applicants.
Dr. F.R. Shaikh, APP for the Respondents.

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CORAM : A.S. OKA & A.A.SAYED, JJ

DATED : 10TH JUNE 2016

ORAL JUDGMENT : (PER A.S. OKA, J)

1. Rule was already issued on 18th June 2009. As an Application was made by the State for vacating the interim relief on the ground that the chargesheet is ready, we have taken up this Application for final disposal.

2. This is an Application under Section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC") for quashing the First Information Report (FIR) registered alleging commission of offence

under Section 188 read with Section 34 of the Indian Penal Code. The Applicants are workers of a particular party. On 2nd March 2009, in the afternoon, there was a function of Bhoomi-Pujan of certain public project in the Village Tise, Taluka Roha, District – Raigad. The second Applicant presided over the said function. The allegation of the prosecution is that notwithstanding the promulgation of Code of Conduct on account of election of the House of Parliament (Loksabha) with effect from 2nd March 2009, the Applicants have committed a breach of the order promulgated by the Secretary and Chief Election Officer of the Government of Maharashtra. The first Informant is the Nayab Tahsildar who was working as an Additional Returning Officer. The contention raised by the Applicants is that a copy of the promulgation of applicability of the Code of Conduct was received by Zilla Parishad, Raigad at Alibag, for the first time on 4th March 2009 and, therefore, on 2nd March 2009, the Applicants had no knowledge of the existence of the Code of Conduct. The submission is that the function dated 2nd March 2009 was a pre-arranged function for which printed cards were already distributed, a copy of which is annexed at Exhibit-B.

3. The learned APP submitted that whether the Applicants have participated in the function on 2nd March 2009 with the knowledge of the Code of Conduct is an issue to be decided at the time of

trial and in fact, after completion of investigation, chargesheet is ready which could not be filed in view of the interim order passed by this Court.

4. In view of this submission made by the learned APP, we had called upon him to produce a draft of the chargesheet. We have carefully perused the draft chargesheet. The allegation made by the first Informant Shri Anant Manya Ambekar who was the Nayab Tahsildar and Assistant Returning Officer is about the Applicants attending of function on 2nd March 2009. The allegation is that after the function was over, in the house of one Shri Umaji Krishnaji Gorivale, there was a public meeting which was attended by several Government officers such as the Block Development Officer, Deputy Engineer, etc. In the statement of Shri Anant Ambekar, on the basis of which FIR was registered, he himself has stated that the communication of the applicability of the Code of Conduct was received by his office by Fax on 4th March 2009. We have perused the material part of the draft chargesheet. Supplementary statement of the said Shri Anant Ambekar was recorded. It again reiterates that a fax intimating the applicability of the Code of Conduct was received in the afternoon at 1.59 p.m on 4th March 2009. We have perused the statements of various witnesses. Shri Damaji Kanhu Kadam stated that the persons who were present in the function of 2nd March 2009 were not aware of the applicability of

the Code of Conduct. The same is the statement made by Shri Ganpat Pandurang Jangam. The statement of Shri Sandeep Ganpat Shigvan reiterates the same thing. The statement of Shri Narayan Tulsidas Desle, the Block Development Officer of Panchayat Samiti, Roha, is that after he reached the place of function on 2nd March 2009, he contacted Shri Ambekar (First Informant) and inquired whether a Code of Conduct has been imposed. He stated that Shri Ambekar informed him that his office has not received any written or oral communication about the same. There are similar statements of other Government officers and members of Village Panchayat who attended the said function. There is no documentary evidence forming part of the chargesheet to show that any publicity was given to the applicability of the Code of Conduct and the members of the public were aware on 2nd March 2009 about coming into force the Code of Conduct.

5. Section 188 of the Indian Penal Code reads thus:

“188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to

human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.”

(Underline added)

6. On plain reading of the said Section, it is obvious that knowledge of the promulgated order is an essential ingredient of the commission of an offence under Section 188. Infact, the explanation to Section 188 refers to disobedience which pre-supposes the knowledge of the promulgated order. Unless the prosecution establishes that after the knowledge of the order of promulgation making the Code of Conduct applicable, the Applicants attended the function on 2nd March 2009, the offence under Section 188 is not made out.

7. Even after taking the material forming part of the chargesheet as correct and after taking statements of all witnesses recorded as correct, no offence under Section 188 of the IPC is made out. Accordingly, the Applicant must succeed and we pass the following order:-

ORDER :

- (a) Rule is made absolute in terms of prayer clause (b)

which reads thus:

“(b) This Honourable Court be pleased to quash and set aside the complaint/F.I.R. no.6 of 2009 dated 14.03.2009, filed at Roha Police Station, Raigad for the alleged offence u/s. 188 of Indian Penal Code r/w. Section 34 of Indian Penal Code.”

- (b) In view of this order, the Criminal Application No.274 of 2014 does not survive and the same is disposed of.

(A.A. SAYED, J)

(A.S. OKA, J)