

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

Criminal Application No.5534 of 2013

Rajesh s/o Sheshrao Naik,
Age 39 years,
Occupation: Advocate/Business,
R/o. Farande Nagar, Nanded
Taluka & District Nanded. . **Applicant.**

Versus

The State of Maharashtra. .. **Respondent.**

Shri. Vaibhav B. Dhage, Advocate, for applicant.

Shri. S.J. Salgare, Additional Public Prosecutor, for
respondent.

With

Criminal Application No.2672 of 2014

Rahim Ahmed Khan s/o Md. Ahmed Khan,
Age 32 years, Occupation: Business,
R/o. Rahmat Nagar, Degloor Naka,
Nanded, Taluka & District Nanded. .. **Applicant.**

Versus

The State of Maharashtra. .. **Respondent.**

Shri. Vaibhav B. Dhage, Advocate, for applicant.

Shri. S.J. Salgare, Additional Public Prosecutor, for respondent.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 1 AUGUST 2018

JUDGMENT (Per T.V. Nalawade, J.):

1) Both the proceedings are filed under section 482 of the Code of Criminal Procedure for the relief of quashing of F.I.R.No.29/2010 registered with Shivaji Nagar Police Station Nanded for offences punishable under sections 143,435,188 of Indian Penal Code. Charge sheet is filed and relief is claimed in respect of the charge sheet also. Both the sides are heard.

2) The papers of investigation show that the incident took place on 5-2-2010. There was information to police that some persons, applicants had intention to burn effigy of a leader of political party, Shiv Sena. The applicants were reported to be the workers of Congress political party. Police reached the spot. They had reached

at 20.00 hours and there they noticed that the applicants were present. Allegations are made that the applicants had brought effigy of a leader of Shiv Sena and they were attempting to burn it. The effigy was prepared by using dry grass. Even when request was made not to burn the effigy, the applicants set fire to the effigy and then police intervened.

3) The submissions made show that there was no promulgation of any order to prevent gathering etc. on that date. It can be said that the effigy was belonging to the persons who were there and they had prepared it from grass and they burnt it. This was not property of any other person and no mischief was there so provision 435 IPC cannot be used against them. Similarly, provision of sections 143, 188 IPC also cannot be used. There are no such allegations. The allegation is that some workers of Congress Political Party had gathered at the spot. The panchanama shows that portion of effigy was there in burnt condition. In view of nature of allegations and the aforesaid material this Court holds that it is not desirable to direct the applicants to face the trial. The contentions

made show that they were there to have some agitation, for protest. No other allegation is made. In the result, both the applications are allowed. Relief is granted in terms of prayer clause (B). Rule is made absolute in those terms.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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