

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

CRIMINAL APPLICATION [APL] NO.365 OF 2016

[Chandrashekhar Gulabrao Gulhane .vs. The State of Maharashtra and one]

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

Court's or Judge's orders

Shri S.P. Palshikar, counsel for the applicant,
Shri K.L. Dharmadhikari, APP for respondent no.1.

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : MARCH 13, 2018.

By this criminal application, the applicant seeks for the quashing and setting aside of the proceedings in RCC No.82/2015 pending before the Judicial Magistrate, First Class, Telhara on the ground that sanction to prosecute the applicant under Section 197 of the Code of Criminal Procedure is not obtained.

A First Information Report was registered against the applicant for the offences punishable under Sections 294, 506 and 323 of the Penal Code. The FIR was registered on the basis of a report lodged by the non-applicant no.2, the then President of the Municipal Council, Telhara. As per the report lodged by the non-applicant no.2, the applicant had abused the non-applicant no.2 in filthy language and had caught hold of the collar of his shirt and had assaulted the non-applicant no.2 by fists and slaps. It is alleged in the complaint lodged by the non-applicant no.2 that the applicant had threatened the non-applicant no.2 that he would kill him. It is also alleged that the applicant ran behind the non-applicant no.2 on the road and

slapped the non-applicant no.2 and again abused him in filthy language. According to the applicant, since the chargesheet is filed against the applicant without obtaining the sanction to prosecute the applicant, who has committed the act in discharge of his duties, the criminal proceedings bearing No. RCC No.82/2015 are liable to be quashed and set aside. According to the applicant, it was necessary for the non-applicant no.1 to obtain the sanction under Section 197 of the Code of Criminal Procedure before filing the charge-sheet against the applicant.

We are not inclined to grant the relief sought by the applicant in this criminal application by exercising the jurisdiction under Section 482 of the Code of Criminal Procedure. The learned Additional Public Prosecutor has rightly submitted that the acts allegedly committed by the applicant viz. abusing the non-applicant no.2 in filthy language, assaulting the non-applicant no.2 with fists and slaps and running behind him on the road and threatening to kill him cannot be *prima facie* treated as acts which the applicant had performed in discharge of his official duties. On a reading of the allegations made in the complaint lodged by the non-applicant no.2, we are not inclined to hold at this stage that the applicant had committed the alleged acts in discharge of his official duties and hence the sanction under Section 197 of the Code of Criminal Procedure would be necessary. The Hon'ble Supreme Court has held in the judgment reported in **(2015) 1 SCC 513 (Rajib Ranjan and others .vs. R. Vijaykumar)** that the provisions of Section 197 of the Code of Criminal Procedure cannot be attracted if the acts of a public servant cannot be treated as part of his official duties. The issues raised in this application could be appropriately decided in the

trial.

In the result, the criminal application fails and is dismissed. Order accordingly.

JUDGE

JUDGE

Gulande