

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1403 OF 2020

Adv. Parag Shrikrushna Khankari,
 Age : 40 years, Occu. Advocate,
 R/o. Shrimangalam, Near Chitale Hospital,
 Wani Colony, Near Sambhaji Garden Deopur,
 Dhule, Taluka and District Dhule.

.. APPLICANT

VERSUS

1. The State of Maharashtra,
 Through Dhule City Police Station,
 Taluka And District Dhule.
2. Chandrakant Shamrao Patil,
 Age : Major, Occu. Police Head Constable,
 R/o. Through Dhule City Police Station,
 Taluka and District Dhule.

.. RESPONDENTS

...
 Mr. Prashant M. Nagargoje, Advocate for Applicant
 Mr. R. D. Sanap, APP for Respondents

...
CORAM : T. V. NALAWADE AND
SHRIKANT D. KULKARNI, JJ.

DATE : 3rd NOVEMBER, 2020

PER COURT :-

The present application is filed for relief of quashing of First Information Report (FIR) No. 99 of 2020 registered with Dhule Police Station for the offence punishable under Section 188 of the Indian Penal Code and under Section 37(1)(3) read with Sections 135, 112 and 117 of the Maharashtra Police Act.

2. It is contention of the State that there was prohibitory order issued under Section 144 of the Code of Criminal Procedure, 1973 and in breach of that order, present applicant, who is an advocate became member of congregation, gave slogans and thereby committed an offence. FIR was

given by respondent No.2 – Police Head Constable. Learned APP is representing respondent No.1 – State and respondent No.2 also.

3. Both the sides are heard.

4. FIR was given on 05-04-2019. In the FIR, it is mentioned that in congregation or procession which was taken, there were 20 to 25 persons. Name of present applicant, who is an Advocate was known to the Police and his name was specifically mentioned in the FIR. The allegations are made in the FIR that on that day Police were on *Bandobast* duty and they were present in front of the office of District Magistrate, Dhule. It is contended that there was prohibitory order issued by District Magistrate, Dhule. It is contended that there was prohibitory order issued by District Magistrate, Dhule, number of which is given in FIR, which was to remain in operation till 23.55 hours of 05-04-2019. The incident took place on 05-04-2019 at about 13.05 hours. It is contended by the informant that at about 13.05 hours, one candidate of *Bhartiya Tribal Party* namely Pandharinath Chaitram More came for filing nomination form with supporters, who were around 20 to 25 in number. The names of as many as 15 supporters are given in the FIR and they were known to the informant. The allegation made in the FIR is that even when there was prohibitory order, in breach of prohibitory order, without taking any permission they came in congregation and they gave slogan for *Bhartiya Tribal Party*. They committed breach of peace and breach of order, which was prohibiting such congregation. The papers of investigation contain statements of many persons. The photostat copies of nomination paper, prohibitory order, certificate obtained under Section 65B of the Evidence Act and CCTV footage, etc. The statements of witnesses show that these

persons had come together but afterwards, the candidate, the person who signed as proposer and the person who was the seconder of nominee, were allowed to enter the office and others were asked to leave due to aforesaid conduct of those persons. Subsequently, a notice was given under Section 41-A(1) of the Cr.P.C. and action was taken. These papers show that there is more than sufficient material to make out prima facie case for aforesaid offences.

5. Learned counsel for the applicant submits that the applicant had gone there only as advocate and he was to help the candidate at the time of filing nomination paper and have a scrutiny. Learned counsel for the applicant submitted that if CCTV footage of the hall, where Returning Officer was sitting is collected, then it will show that at the relevant time the applicant was present before the Returning Officer was sitting and that will falsify the allegations made against the applicant. The aforesaid contentions made in FIR and Police Statements show that even when they had come to congregation they were giving slogans, few persons were allowed to enter the office as nomination was to be filed. If there is some discrepancy in the time of few minutes, that discrepancy cannot be considered at this stage, when there are statements of the witnesses against the applicant of aforesaid nature. Due to all these circumstances, this Court holds that it is not a fit case in which such relief can be granted in favour of the applicant. In the result, the Criminal Application stands dismissed.

Sd./-

[**SHRIKANT D. KULKARNI**]
JUDGE

Sd./-

[**T. V. NALAWADE**]
JUDGE