

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

CRIMINAL REVISION APPLICATION NO. 277 OF 2016

The State of Maharashtra. ..Applicant.
v/s.

Vijay Kashiram Chauhan. ..Respondent.

Ms. Geeta Mulekar, APP for State.
Respondent in person present.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : FEBRUARY 13, 2020.

P. C. :

1 Heard Learned APP for State and respondent in person.

2 State being aggrieved by the Order dated 1st October, 2013 in C.C. No. 368/PW/2010 thereby discharging accused of the offence punishable under section 143, 145, 146, 448, 452, 353 has filed present revision application.

3 It is the case of the prosecution that on 19th May, 2009 accused who were almost 10 to 15 persons, were self-proclaimed activists. They had entered in the office of the

Talwalkar

Chief Information Commissioner, Mumbai at about 5.15 p.m. They had sought permission from the Chief Information Commissioner, Mumbai to attend the proceedings. The Chief Information Commissioner had allowed 4 to 5 activists to enter into his court room. However, all the other persons had made space for themselves. They were asked to leave court room. At that juncture, it is alleged that the activists, to show their protest had stood up and had started singing national anthem.

4 According to the prosecution, the Chief Information Commissioner was disturbed in conducting his proceedings and had directed his PA Ms. Kalpana Gavas to file complaint against 10 persons at Marine Drive Police Station. On the basis of FIR filed by Mrs. Gavas, Crime No. 97 of 2009 was registered against accused for the offence punishable under section 143, 145, 146, 148, 452, 353 of the Indian Penal Code. The charge-sheet was filed against accused, after recording statement of the witnesses, who were the staff members of the Chief Information Commissioner and the police officers who were on duty.

5 The accused persons had filed discharge application before the Chief Metropolitan Magistrate. The learned Additional Chief Metropolitan Magistrate, 8th Court, Esplanade

by an order dated 22/2/2012 was pleased to reject the said application.

6 Being aggrieved by the said order, the respondent had filed Criminal Revision Application No. 500 of 2012 before the learned Sessions Judge. Learned Sessions Judge upon perusing the entire record and after perusing the statement of four witnesses, had observed that a supplementary statement of the complainant, was recorded after 3 days of the incident, which indicated that the accused persons had entered into the Chamber of Chief Information Commissioner and had started hot discussion and only when they were asked to go out, they had started singing national anthem. This very fact would raise a doubt as to whether the incident had occurred in the court of Chief Information Commissioner or in his chamber. The statement was improvised subsequently.

7 It appears that the accused persons were requesting Commissioner to spare a few minutes to hear their grievance. The commissioner had declined their request and thereafter, he had returned to his chamber. In protest, they had sung national anthem collectively. In fact, the act of the accused did not call for any criminal prosecution as such. Chief

Talwalkar

Information Commissioner was at liberty to take action and could have handled the whole situation on the administrative side. However, criminal prosecution was initiated and the same is pending since 2009. It cannot be said for a moment that the accused persons had misused the liberty. However, the same could have been settled forthwith.

8 Learned APP submits that in respect of the same incident, accused persons have also filed a complaint which is registered as MCR No. 3 of 2011 at Marine Drive Police Station. The respondent who is present in the court submits that in fact, MCR filed by the accused persons was pertaining to prevention of insult to national honour. The said criminal case may take its own course.

9 However, as on today, it cannot be said that the accused persons have committed offence punishable under section 143, 145, 148 or 448 of the Indian Penal Code. As far as section 353 of the Indian Penal Code is concerned, it is not clear from the FIR or the supplementary statement as to whether the incident had occurred in the court room or in the chamber.

10 Upon instructions learned APP submits that there are no similar offences registered against the accused persons. They have no criminal antecedents. Hence, the Revision Application being sans merits stands rejected.

[SMT. SADHANA S. JADHAV, J.]