

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

CRIMINAL APPLICATION NO.2300 OF 2019

Tarachand S/o Mansukhlal Sancheti,
Age-35 years, Occu:Business,
R/o-Pragati Nagar, Nav-Nagapur,
Taluka and District-Ahmednagar.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through its Investigation Officer,
M.I.D.C. Police Station, Ahmednagar,
Taluka and District-Ahmednagar,
- 2) Ginyandev S/o Namdev Jadhav,
Age-48 years, Occu: Service (P.S.I.),
R/o-M.I.D.C. Police Station, Ahmednagar,
Taluka and District-Ahmednagar.

...RESPONDENTS

...
Mr. Narayan B. Narwade Advocate for Applicant.
Mr. M.M. Nerlikar, A.P.P. for Respondent-State.
...

**CORAM: V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 7th DECEMBER, 2021

ORDER :

1. By consent of the parties, heard finally at admission stage.

2. The applicant – original accused is seeking quashing of the First Information Report bearing Crime No. 347 of 2019 registered with M.I.D.C. Police Station, Ahmednagar for the offences punishable under Section 353 of the Indian Penal Code. During the pendency of the Application, charge-sheet has been submitted. Thus, by carrying out amendment in the prayer clause, the applicant is also seeking quashing of the proceedings bearing R.C.C. No. 584 of 2020 pending before the learned Chief Judicial Magistrate, First Class, Ahmednagar.

3. On 19th June 2019, the applicant had been to M.I.D.C. Police Station, Ahmednagar for lodging the complaint. His complaint was recorded, however, when he was given the print of his complaint for his signature, the applicant has refused to sign the said prints thrice, for the reasons that there were mistakes in the said print and his complaint was not recorded as per his narration. So far as the fourth print is concerned, when it was given to the applicant, the applicant has again refused to sign the said fourth print on the ground that the incident as narrated by him, in detail, is not reproduced in his complaint and the incident in short came to be mentioned in the print. It has been alleged in the complaint that thereafter the applicant has

chewed the said fourth print and when he was questioned about it, the applicant has disclosed that out of stress he has done so. It has been further stated in the complaint that thereafter, on the second print of fourth print the applicant has put his signature. It has been alleged in the complaint that the applicant has tried to deter the public servant from discharging his official duties.

4. Learned counsel for the applicant submits that even if the allegations in the complaint are accepted as it is, no case is made out against the applicant. The applicant has neither assaulted nor used the criminal force to deter the informant from discharging his duties. The applicant had simply inserted the fourth print of his complaint in his mouth and chewed it for the reason that the same was not recorded as per his narration, in detail.

5. Learned APP submits that the very act of the applicant of chewing the fourth print on which his complaint was written, itself is sufficient to attract the provisions of Section 353 of the Indian Penal Code. There is no substance in the Criminal Application and the same is liable to be dismissed. Learned APP submits that even the witnesses who are mainly police staff, and

also the independent witnesses, have corroborated the prosecution story and further the said act done by the applicant has been recorded in the footage of CCTV installed in the Police Station.

6. We have carefully gone through the contents of the complaint, so also perused the charge-sheet. It appears that the applicant was not satisfied, since his complaint was not recorded as per his narration. Initially he has refused to sign three prints taken out by respondent No. 2 – informant. However, when the fourth print was taken out, the applicant was constrained to point out to respondent No. 2 – informant that the incident as narrated by him is not mentioned in detail but it has been mentioned in very short manner. The applicant thereupon has inserted the said fourth print in his mouth and tried to chew it. Further, when he was questioned about it, the applicant has disclosed to respondent No. 2 – informant that he has done so out of the stress.

7. So far as Section 353 of the Indian Penal Code is concerned, the assault or criminal force to deter public servant from discharge of his duty, is made punishable. So far as the “criminal force” and “assault” are concerned, those are defined

under Section 350 and 351 of the Indian Penal Code, which reads as under:-

"350. Criminal force. - Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other."

"351. Assault. - Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation. - Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault."

8. In the given set of allegations, by any stretch of imagination we do not find that Section 353 of the Indian Penal Code stand attracted. The applicant has neither assaulted nor used the criminal force to any person in the execution of his duty as a public servant. He has not tried to prevent or deter respondent No. 2 – informant from the discharge of his duty as a public servant.

9. In a case of **State of Haryana and others Vs. Bhajanlal and others** reported in **1992 Supp. (1) Supreme Court Cases 335**, the Hon'ble Supreme Court, in Paragraph No.102 of the Judgment, in the backdrop of the interpretation of the various relevant provisions of the Code of Criminal Procedure under Chapter XIV and of the principles of law enunciated by the Supreme Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code of Criminal Procedure, formulated the categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. So, clause No. 1 and 3 of Paragraph No. 102 of the Judgment, which are relevant for present discussion, are reproduced herein below:-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2)

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused."

10. In the instant case, the allegations made in the First Information Report and the subsequent investigation resulted into filing of the charge-sheet, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the applicant – accused.

11. In a case of **Kundan s/o Khanderao Dhande vs. Vasudeo S/o Nivruti Fegde and others** (Criminal Application No.4527 of 2016), relied upon by the learned counsel for the applicant, wherein, in the identical facts, learned Division Bench of this Court (CORAM: S.S. SHINDE & SANGITRAO S. PATIL, JJ.), in Para-6 of the Judgment and order dated 25th October 2016, has made the following observations:

"6. From the bare reading of section 353 of the I.P.C., it will be clear that the assault or criminal force, as defined in sections 351 and 350 respectively of the I.P.C. is an essential ingredient to constitute the said offence. As per the Explanation given under Section 351 of the I.P.C., mere words do not amount to an assault. In the present case, it is alleged that the applicant shouted and therefore, respondent no.1 could not execute the decree. The alleged shouting of the applicant is not stated to be coupled with any other gesture. Consequently his shouting

cannot be termed as an assault. Admittedly, no physical force has been used by the applicant against respondent no.1. If that be so, the ingredients of the offence punishable under Section 353 of the I.P.C. cannot be said to have been prima facie disclosed from the F.I.R.”

12. In view of the above, in the given set of allegations, the continuation of proceeding will be the abuse of process of Court. In view of the same and in terms of the ratio laid down by the Hon’ble Supreme Court in the case of **State of Haryana and others Vs. Bhajanlal and others**, (supra), and the observations made by the Division Bench of this Court in the case of **Kundan s/o Khanderao Dhande vs. Vasudeo S/o Nivruti Fegde and others**, in the identical facts of the case, referred above, we proceed to pass the following order:

ORDER

(i) Criminal Application is allowed in terms of prayer clause “**(B)**” and “**(B-1)**”.

(ii) Criminal Application is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE

[V.K. JADHAV]
JUDGE