

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

936 CRIMINAL APPLICATION NO. 4302 OF 2019

SHIVAJI DNYANOBA NAKADE
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

Advocate for Applicant : Mr. M. V. Salunke h/f Mr. N. B. Garje
AGP for Respondent No.1-State : Mr. K. S. Patil
Advocate for Respondent No.2 : Mr. S. V. Munde

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

DATED : 9th DECEMBER, 2021.

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ORDER : (PER : SANDIPKUMAR C. MORE, J.)

1. By consent of the parties, heard finally at the stage of admission.
2. The applicant i.e. original accused, has filed this application for quashing FIR bearing No. 356 of 2018, dated 10/10/2018, registered with Police Station, Ashti, Tq. Ashti, District Beed for the offence punishable under Sections 353, 504 and 506 of IPC and also for quashing subsequent proceeding arising out of it bearing Sessions Case No. 286 of 2019 pending before the learned Principal District and Sessions Judge, Beed.
3. Learned counsel for the applicant submits that no ingredients of the aforesaid sections with which the applicant is charged with,

are established even if the aforesaid FIR is accepted as it is and in its entirety. He submits that the informant i.e. respondent no.2 is admittedly a public servant but at the time of incident he was not at all discharging his duty as a public servant. At the time of incident, respondent no.2/informant was merely taking tea in one hotel at Doithan square. According to him, the applicant never used any criminal force to deter respondent no.2/informant from discharging his duty as a public servant. As such, no necessary ingredients of Section 353 of IPC are attracted herein. He also submits that respondent no.2/informant had in fact charge sheeted for the offence punishable under Sections 324, 323, 504 and 506 of IPC in respect of the same incident on the basis of complaint lodged by the present applicant. As such, the learned counsel for the applicant submits that the possibility of making false allegations against the applicant by respondent no.2/informant in the present crime cannot be ruled out.

4. Learned APP submits that the contents of the FIR definitely indicate the constitution of offence under Sections 353, 504, 506 of IPC. Moreover, there is triable case against the applicant, which requires thorough trial.

5. On the other hand, learned counsel appearing on behalf of respondent no.2/informant drew our attention to the office order of

the respondent no.2/informant filed along with the FIR and submitted that respondent no.2/informant was assigned with duty of distribution of electricity bills and recovery thereof on the day of incident and as it was the out door duty, it must be treated as duty for whole day. Further, there are clear-cut allegations against the applicant that he insulted and abused respondent no.2/ informant and also uttered words that he would not allow respondent no.2/informant to perform his duty in Doithan village, where the incident allegedly took place. With this, learned counsel for respondent no.2/informant prayed for dismissal of the application.

6. We have gone through the FIR as well as contents of the charge sheet, carefully. On bare perusal of the FIR in question, it reveals that respondent no.2/informant on 10/10/2018 from 8.00 a.m. was distributing electric bills and also doing recovery thereof till 12.00 noon. It is alleged in the FIR that at about 12.00 noon when after distributing the electric bills in Doithan village, respondent no.2/informant along with his assistant Vidyasagar Sunil Pawar were having tea in one tea-stall at Doithan square, the applicant came there and started abusing him on ground that respondent no.2/informant did not visit his village for about three months. It further reveals that the applicant also threatened respondent no.2/informant that he would not allow respondent

no.2/informant to perform his duty in the village. Not only this, the applicant by pointing out to his chappals also intended to beat respondent no.2/informant. With these allegations, the prosecution as well as respondent no.2/informant are claiming that the applicant obstructed respondent no.2/informant from discharging his duty.

7. So far as offence under Sections 504 and 506 of IPC is concerned, there are clear-cut allegations involving the ingredients of the aforesaid sections in the FIR and therefore, we are not going to consider the application for quashing the offence under those sections.

8. So far as allegations involving ingredients of Section 353 of IPC are concerned, we would like to reproduce the said section as below :

"353. Assault or criminal force to deter public servant from discharge of his duty :—

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a

term which may extend to two years, or with fine, or with both".

9. On careful reading of Section 353 of IPC, it appears that for attracting the provisions of said section there should be allegation that the accused assaulted the public servant or used criminal force with intention to prevent or deter the public servant from discharging his duty as a public servant. Further the terms criminal force and assault are also defined in sections 350 and 351 respectively, which are stated herein below for quick reference.

"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 ".

However, on going through the entire FIR, it is nowhere mentioned that the applicant in any manner actually assaulted respondent no.2/informant or used any criminal force against him as contemplated in the aforesaid definitions. Further the wording of the FIR in dispute itself shows that respondent no.2/informant was merely having tea at the relevant time when the incident took place and that too after distribution of electric bills. Thus, it clear suggests that at the particular time when the incident took place, respondent no.2/informant was not performing his duty as a public servant. Further the FIR clearly indicates that there was no assault or use of criminal force against respondent no.2/informant but only threatening and abusing were there. As such, even we accept the contents or allegations made in the FIR as it is, then also the necessary ingredients of offence under Section 353 of IPC are not established. At the most, the ingredients of offence under Section 504 and 506 of IPC can be applied in the given set of circumstances. Though it is vehemently argued on behalf of respondent no.2/informant that respondent no.2/informant was continuously on duty for the whole day and therefore, abusing him at the time of having tea, would definitely amount to deterrence as contemplated in Section 353 of IPC, however, we are not in

agreement with the submissions mainly because even if it is presumed that he was on duty, but the necessary ingredients constituting the offence under Section 353 of IPC are not at all there.

10. It would not be out of place to mention here that respondent no.2/informant has also been charge sheeted on the report lodged by the applicant in respect of the same incident for the offence punishable under Sections 324, 323, 504 and 506 of IPC. Learned Judicial Magistrate (First Class), Court NO.2, Ashti in his order dated 18/10/2019 in SCC NO. 167 of 2018 has also stated that on 18/12/2019 Ambhora Police Station has filed charge sheet against respondent no.2/informant and in view of the provisions of Section 210 of Cr.P.C. private complaint before him will be merged in the case based on police report to that effect.

11. Learned counsel for the applicant heavily relied on the following judgments :

I) Manik Taneja and another Vs. State of Karnataka and another, reported in 2015 AIR (SCW) 948;

II) Fakruddin Ahmad Lohar vs. The State of Maharashtra, reported in 2017 ALL MR (Cri) 3550.

12. The learned Apex Court in the case of **Manik Taneja** (supra) has observed that the person accused of the offence under Section 353 of IPC should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as that of a public servant.

In the case of **Fakruddin Ahmad Lohar** (supra), wherein it is held that the allegations that accused assaulted the public servant or used criminal force with intention to prevent or deter the public servant from discharging his duty for attracting provisions under Section 353 of IPC are must and accordingly quashed the FIR for offence punishable under Sections 353 and 506 of IPC.

13. In view of the ratio laid down by this court as well as the Hon'ble Apex Court in the judgment and order cited above, it is made amply clear that there must be intentional assault and use of criminal force to prevent the public servant from discharging his duty for constituting the offence under Section 353 of IPC. However, in view of our discussion made above, both these necessary ingredients are clearly missing. Even the allegations made in the F.I.R. are taken as proved, then also no offence under Section 353 of IPC is made out. We have already made it clear that there are allegations in the FIR constituting an offence under sections 504 and 506 of IPC and therefore, we are of the considered

opinion that no triable case is made out against the applicant so far as charge under Section 353 of IPC is concerned. Under these circumstances and the ratio laid down in the aforesaid judgments and orders, we pass the following order.

O R D E R

- I) The criminal application is hereby allowed in terms of prayer clause “ B & C ” only to the extent of offence under Section 353 of IPC.
- II) The criminal application accordingly stands disposed of.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-