

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NOS. 53 AND 21 OF 2015
AND
CRIMINAL REVISION APPLICATION NOS. 50 AND 51 OF 2014

CRIMINAL REVISION APPLICATION NO. 53 OF 2015

1. Shri Sanjay Shantaram Naik, r/o. H. ...Applicant
No. 364, Durgawadi, Taleigao, Goa.

V e r s u s

1. State
(Through CBI, ACB, Mumbai) ...Respondents

WITH
CRIMINAL REVISION APPLICATION NO. 21 OF 2015

- 1 Shri Anthony Santan Berreto @ Tony,
major of age, r/o. Flat No. F2, Bldg. No.
D-1, TR Residency, Dondrebhat,
Taleigao, Goa.
- 2 Shri Janu Mahadeo Rosario, Major of
age, r/o. H. No. 56/D, Oitadem,
Taleigao, Goa.
3. Shri Inacio Pereira @ J. B. Shri Joan Paul
Pereira, Major of age, r/o. 414,
Posrembhat, Taleigao, Goa.
4. Shri Levino Anthony Pereira, Shri
Remizio Pereira, Major of age, r/o. H.
No. 287, Kerant, Caranzalem, Goa.
5. Shri Krishna Ramdas Shirodkar @
Milind, Major of age, r/o. H. No. 99,
Mala, Panaji, Goa.

6. Shri Deepak Bhandrabahadur @ Kancha Nepali, Major of age, r/o Village Gulleria, Bardia, Tulsipur, Dist. Bheri, Nepal.
7. Shri Salim Shaikh, Major of age, s/o. Md. Sadiq Shaikh, r/o. H. No. 410 B, Posrem Bhat, Taleigao, Goa.
8. Shri Nagesh Siddappa Karishetty, Major of age, r/o. H. No. 256, Silveriabhat, St. Inez, Goa.
9. Shri Satish Sanguekar @ Naik, Major of age, s/o. Vasant Sanguekar, r/o H. No. 44, Tonca Municipal Qtrs., Goa.
10. Shri Sandip Tukaram Vaigankar @ Babu, Major of age, r/o. H. No. 609/1, Opp. Kamat Estate, Tonca, Caranzalem, Tiswadi, Panaji, Goa.
11. Shri Narayan Pappayya Dasari, Major of age, r/o. H. No. 19/A-Type PHE, Caranzalem, Panaji, Goa.
12. Shri Norman J. Fernandes, Major of age, s/o. Thomas Fernandes, r/o. H. No. 479, Volleybhatt, Taleigao, Goa.
13. Smt. Anjali Gajanan Naik, Major of age, r/o Flat No. A-7/T-2, Essar Galaxy, Shankarwadi, Taleigao, Goa.
14. Shri Dilip Pandurang Diukar, Major of age, r/o. H. No. G-1, Anusuya Apts., Anaral Bandh, Taleigao, Goa.
15. Shri Marcus Raymond Amaral, Major of

age, r/o. H. No. 123, Dondrem,
Taleigao, Goa.

16. Shri Chandan Devidas Karapurkar,
Major of age, r/o. H. No. 567, Behind St.
Peter's Chapel, Caranzalem, Dona Paula,
Goa.

17. Shri Mahesh Kanholkar @ Banty, Major
of age, r/o. H. No. 221/4, Alto Kernem,
Caranzalem, Goa.

18. Shri Rajesh Govind Ravindran, Major of
age, r/o. H. No. F-2, Martin's Apts.,
Caranzalem, Goa.

19. Shri Ketan Kishore Amonkar, Major of
age, r/o. H. No. 606, Opp. Kamat
Estate, Tonca, Caranzalem, Goa.

20. Shri Mahesh Tukaram Karapurkar,
Major of age, r/o. H. No. 199, Aradi
Bandh, St. Cruz, Tiswadi, Panaji, Goa.

21. Shri Mangesh Gopi Parab, Major of age,
r/o. H. No. 1818, Badbad Bhat, Classic
Bldg., Taleigao, Goa.

22. Shri Hafizulla Khan, Major of age, s/o
Shri S. A. Rahim Khan, r/o. H. No. 164,
Opp. Shankar Temple, Taleigao, Goa.

23. Smt. Kanti Timlo Kunkolkar, Major of
age, r/o. H. No. 321, Oitiyan, Taleigao,
Goa.

...Applicants

V e r s u s

1. State, (Through CBI, ACB, Mumbai)

...Respondents

CRIMINAL REVISION APPLICATION NO. 50 OF 2014

1. Tony Alfred Rodrigues, son of Alfred Rodrigues, Major in age, Businessman, Indian National and resident of House No.495, Odlem Bhat, Taleigao, Goa. ...Applicant

V e r s u s

1. Special Public Prosecutor, CBI, Panaji, Goa.
2. Pramod Mudbhatkal, Superintendent of Police, Central Bureau of Investigation SCB, Mumbai. ...Respondents

AND

CRIMINAL REVISION APPLICATION NO. 51 OF 2014

1. Smt. Jennifer Monserrate, wife of Shri Atanasio Monserrate, major of age, r/o Casa Monserrate, Taleigao, Goa.
2. Shri Dayanand Anant Karapurkar, Major of age, r/o. H. No. 221, Alto Kenim, Taleigao, Goa.
3. Shri Uday Waman Madkaikar, major of age, r/o. H. No. 129, Madkaikar Nagar, Bhatlem, Goa.
4. Shri John F. Rodrigues @ PA, s/o Alex Rodrigues, major of age, r/o. H. No. E-10, Portais, Panaji, Goa. ... Applicants

V e r s u s

1. STATE

(Through CBI, ACB, Mumbai) ... Respondents

Mr. Nitin N. Sardesai, Senior Advocate with *Mr. Vibhav Amonkar, Mr. L. Raghunandan, Mr. K. Sabnis, Ms. Gautami Kamat and Mr. S. Sardesai, Advocates for the Applicants in CRIR Nos.51 of 2014, 21 of 2015 and 53 of 2015.*

Mr. S. G. Desai, Senior Advocate with *Mr. Pavithran AV, Advocate for the Applicants in CRIR No.50 of 2014.*

Mr. Mahesh Amonkar, Additional Public Prosecutor for the *Respondents-State (CBI).*

CORAM : MANISH PITALE, J
Reserved on: 29th November 2021
Pronounced on: 22nd December 2021

JUDGMENT

1. These revision applications are filed by 29 out of 37 Accused persons charge-sheeted in respect of an incident that took place on 19.02.2008 at Panaji, in Goa. The Accused no. 1 Atanasio Monserrate is a Member of the Legislative Assembly of Goa, the Accused no.2 is Jennifer Monserrate, now a Minister in the Government, Accused no. 3 is Tony Rodrigues, the then Mayor of the Corporation of City of Panaji and other Accused persons. The said Accused no. 1 has not filed any revision application against the order impugned in these revision applications.

2. By the impugned order dated 12.09.2014, the Special Court for Central Bureau of Investigation (CBI) in Goa heard the Accused persons before charge and held that, *prima facie*, sufficient evidence was available to frame charges against the accused persons for

offences under Sections 143, 147, 148, 149, 153, 324, 325, 326, 332, 333, 427 & 435 of Indian Penal Code (IPC) and Section 3 of The Prevention of Damage to Public Property Act, 1984, (for short, *Act of 1984*).

3. According to the Applicants, not even a *prima facie* case is made out against them as regards the said offences. These applications were admitted to be heard together. While admitting the applications, by an order dated 04.12.2014, this Court granted stay of further proceedings in Sessions Case no. 4 of 2014, qua the applicants, until the final disposal of the applications.

4. According to the State (through CBI), the brief facts leading to registration of offences in the present case are that, on 19.02.2008, at about 7.30 p.m., the Accused no.1, his wife-Accused no.2 and Accused no.3 i.e. the then Mayor of the Corporation City of Panaji, along with other accused persons gathered near the house of the Accused no.1 at Taleigao and thereafter proceeded with a morcha to reach the Police Station at Panaji, where they sat on a dharna. They shouted slogans against the Police and demanded the suspension of one Mr. Sudesh Rohidas Naik, Police Inspector, at the said Police Station. The grievance of the Accused no.1 and the other Accused persons was that the Police had failed to take any action on a complaint filed by one Ryan Godinho against certain persons for having violently attacked and wrongly confined him. The said Accused persons claimed that instead of acting on the complaint filed by the said Ryan Godinho, the Police had sided with the persons who had attacked him and, therefore, the suspension of the said Police Inspector was necessary. The number of persons in

the dharna outside the Police Station increased and at about 9.00 p.m., the Accused no.1 addressed the morcha, giving the Police half an hour to suspend the said Police Inspector, failing which, he threatened that the persons in the morcha would enter the Police Station and teach a lesson to the Police.

5. It is alleged that some other Accused persons also gave inflammatory speeches to attack the Police. The appeals of the Sub-Divisional Magistrate and the Sub-Divisional Police Officer to the Accused no.1 and the aforesaid other Accused persons to maintain peace, were ignored and the Accused persons repeatedly called the members of the morcha to attack them, due to which the entire mob became restless and aggressive. At this stage, the aforesaid Officers requested the Accused no. 1 to come to the office of the Police Inspector at Panaji Police Station for discussion with the Police and other officials, but he declined the said request.

6. At about 9.30 p.m., the crowd pushed the Police personnel who had cordoned the Police Station and attacked them with stones, broken bottles, and other such materials. They also attacked the public property of the Panaji Police Station, including doors and glass windows by pelting stones. A motorcycle was set on fire and other vehicles were also damaged. The Police personnel had to intervene at this stage and, in the process, as many as 41 Police personnel sustained injuries, 25 out of whom had to be shifted for treatment at Goa Medical College Hospital. When the crowd was getting out of control, two Police Inspectors were constrained to fire three rounds each from their service weapons, and tear gas shells were also used to disperse the crowd. The Police carried out a lathi-

charge to disperse the crowd, during which one round of a rifle of a Police Constable went missing. On the basis of the aforesaid incident, First Information Report (FIR) was registered and the investigation was undertaken. It was handed over to the CBI. During the course of the investigation, statements of witnesses were recorded. Photographs clicked at the time of the incident were taken into consideration and charge sheet was filed against 37 accused persons. It is significant that in the charge sheet, no reference was made to either Section 34 or Section 120-B of the IPC. The Investigating Agency and the Accused were heard on charge and, as noted above, the Special Court found that there was *prima facie* material to frame charges against the Accused persons for offences stated hereinabove.

7. Mr. Nitin Sardessai, the learned Senior Counsel, appeared for the Applicants/Accused persons in Application no. 51 of 2014, 21 of 2015, and 53 of 2015. He submitted that the assembly of persons on the day of the incident, was legal as there was no order issued by the competent authority under Section 144 of the Code of Criminal Procedure (Cr.P.C). It was submitted that the assembly of persons was peacefully demonstrating, permitted under law, to raise demands against the State, in the backdrop of the grievance that the complaint of the said Ryan Godinho was not properly attended to by the Police Personnel. Even if the demand for suspension of the said Police Inspector could be said to be slightly overboard, but that in itself could not have rendered the assembly of persons illegal. In fact, the peaceful demonstration outside the Police Station at Panaji was of persons whose object was not unlawful. Even as per the

case of the respondent, the assembly of persons all of a sudden turned violent.

8. The learned Senior Counsel submitted that even if the explanation to Section 141 of the IPC, which defines unlawful assembly, stipulates that an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly, there was nothing to show that the Applicants/Accused persons in the said applications were present when the assembly of persons is said to have suddenly turned violent and therefore unlawful. Even if the Applicants before this Court were present when there was an assembly of persons gathered outside the Police Station at Panaji, if no material is brought on record to even *prima facie* demonstrate the presence of the Applicants when the said assembly is said to have turned unlawful, no charges could be framed against the Applicants. It was submitted that, according to the prosecuting agency, the Accused no.1 was the main accused who is alleged to have given the inflammatory speech at 9.00 p.m., which led to violence. But the said Accused no.1 is not an Applicant before this Court and that he would be facing trial. The question being raised before this Court by the Applicants is, as to how could they be roped in to face charges and trial for the aforesaid offences when even *prima facie* case is not made out about their presence at the spot of the incident, after the assembly is said to have turned unlawful.

9. It is submitted that none of the witnesses referred to by the Special Court have stated as to when the assembly turned unlawful and that the Applicants were indeed present when such transition of

the assembly took place for it to be labelled as an unlawful assembly. The learned Senior Counsel took this Court through the statements of all the witnesses referred to by the Special Court and other witnesses also to contend that a *prima facie* case was not made out against the Applicants. It was submitted that the photographs and alleged videography on record could not even *prima facie* indicate that the Applicants were indeed members of the unlawful assembly in order to face trial for the aforesaid offences. In this regard, the learned Senior Counsel placed much emphasis on the fact that neither Section 34 nor Section 120-B of the IPC was invoked in the present case, demonstrating that there was neither common intention nor conspiracy alleged against the applicants and other Accused. It was submitted that the photographs placed on record indicated that the demonstration was peaceful and, therefore, it was not even *prima facie* incriminating. Thereafter, the learned Senior Counsel referred to the ingredients of the offences, particularly Sections 141 and 142, read with Section 149 of the IPC, to contend that even *prima facie* ingredients of the said offences were not made out. It was submitted that even if the material as placed before the Court by the prosecuting agency was to be accepted as it is, no case for proceeding against the Applicants was made out. On this basis, it was submitted that the Applicants did not deserve to face the embarrassment and harassment of trial in criminal proceedings. The learned Senior Counsel relied upon the Judgments of the Hon'ble Supreme Court in the case of *Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijjaya & Ors.*¹, *Prabhakar Shankar Sawant and Ors. vs State of Maharashtra*²,

1 (1990) 4 SCC 76

2 (1979) 4 SCC 727

*Musa Khan vs. State of Maharashtra*³, *Yogesh alias Sachin Jagdish Joshi vs. State of Maharashtra*⁴, *State of Haryana and Ors vs Ch. Bhajan Lal and Ors*⁵ and *Akbar Sheikh & Ors. vs. State of West Bengal*⁶. The learned Senior Counsel also relied upon the Judgment of this Court in the case of *Jayendra Shantaram Dighe & Ors. vs. State of Maharashtra*⁷.

10. Mr. S. G. Desai, learned Senior Counsel appearing for Applicant in Criminal Revision Application no. 50 of 2014, submitted that the members of the assembly who had gathered outside the Police Station at Panaji, were exercising their fundamental rights under Article 19(1) (a) and (b) of the Constitution of India and, therefore, they could not be prosecuted for the same. It was submitted that there was no order under Section 144 of the Cr.P.C and hence the assembly of persons could not be said to be unlawful. It was further submitted that even according to the prosecuting agency, the assembly of persons was peaceful when the people gathered outside the Police Station at Panaji and that they were merely raising demands against the Police for their alleged inaction. It was submitted that the Applicant in the aforesaid application being the Mayor of the Corporation of the City of Panaji, joined the peaceful assembly of persons and that in itself could not be said to be an offence. It was submitted that the material on record did not even *prima facie* establish the presence of the Accused at the place of the incident when the assembly

³ (1977) 1 SCC 733

⁴ (2008) 10 SCC 394

⁵ 1992 Suppl. (1) SCC 335

⁶ (2009) 7 SCC 415

⁷ 1992(1) Bom. C.R. 679

turned unlawful. It was emphasized that even as per the prosecuting agency, at around 9.30 p.m., violence suddenly erupted. But, there was no material on record to even *prima facie* indicate the presence of the said Applicant at the stage when the transition in the nature of the assembly took place. It was submitted that no overt act was demonstrated on the part of the said Applicant and the ingredients of the offences under Section 141 were completely missing against the said Applicant. The learned Senior Counsel appearing for the said Applicant relied upon observations of the Hon'ble Supreme Court in the case of ***Ramlila Maidan Incident, in Re***⁸ to contend that no case was made out against the Applicant for making him face the harassment of trial.

11. Mr. Mahesh Amonkar, learned Additional Public Prosecutor, appeared on behalf of the Respondent-CBI and contended that there was no substance in the arguments put forth on behalf of the Applicants. It was submitted that from the time the persons gathered outside the house of Accused no.1 at Taleigao, they had no intention of demonstrating in a peaceful manner. It was submitted that there was material placed on record to show that stones and glass bottles were taken in cars from Taleigao to the Police Station at Panaji and there were gunny bags full of stones. The learned Additional Public Prosecutor referred to the statement recorded during the course of the investigation of a Reporter who had stated that all the Applicants were seen at or near the Police Station in the morcha all throughout the buildup and during the actual incident. It was submitted that the material on record was enough to raise grave suspicion against the Applicants and the Accused persons at the

8 (2012) 5 SCC 1

spot. The photographs and the videography placed on the record of the charge sheet were enough to demonstrate their involvement and strong *prima facie* case was made out against the said Accused persons, including the Applicants. It was submitted that the contentions raised before this Court were in the nature of defence, which could certainly be considered during the course of the trial. It was clear that a case was made out against the Applicants to face trial and that the Revision Applications deserved to be dismissed. It was further submitted that the Judgments on which the learned Counsel appearing for the Applicants had placed reliance concerning ingredients of the offences under Section 141 and 142 read with Section 149 of the IPC, were all cases where the Hon'ble Supreme Court was dealing with final orders passed after completion of trials and that, therefore, the applications did not deserve favourable considerations.

12. It was further submitted that the material on record was sufficient to proceed against the Applicants. The scope of interference in such cases concerning charge sheet and framing of charges is narrow and when the Court upon sifting through the material on record finds that *prima facie* case is made out, the matter must go to trial against the Accused persons. On this basis, it was submitted that the Revision Application deserved to be dismissed so that the trial in the present case, which had been languishing since the year 2008, could be expeditiously completed. It was submitted that the Applicants have been enjoying stay of the trial from the year 2014, which needs to be vacated upon dismissal of the Revision Applications. The learned Additional Public Prosecutor relied upon the Judgments of the Hon'ble Supreme Court

in the case of *State of M.P. vs. Mohanlal Soni*⁹, *Tej Bir & anr. vs. State of Haryana & anr.*,¹⁰ *Tarun Jit Tejpal vs. State of Goa*¹¹ *State of Tamil Nadu vs. N. Suresh Rajan & Ors.*¹² and *State (NCT of Delhi) vs. Shiv Charan Bansal & Ors.*¹³

13. Having considered the contentions raised on behalf of the rival parties, two aspects need to be considered to examine the claim raised on behalf of the Applicants that they do not deserve to face trial as the material brought on record along with the charge sheet, even if accepted as it is, would not justify framing of charges and proceeding to trial. The first aspect concerns the nature of jurisdiction exercised by the Court while examining as to whether the accused deserved to be discharged or that no ground is made out for framing charges against them and the extent and manner in which the Court can appreciate the material on record to render findings on the said aspect of the matter. Secondly, while exercising such jurisdiction on the basis of material placed on record in the present case, whether *prima facie* ingredients of the offences with which the Applicants have been charged, can be said to be made out. It needs to be examined as to whether the material on record satisfies the ingredients, *prima facie*, to justify framing of charges and conducting trial against the Applicants before this Court.

14. Before considering the material on record and the submissions made in that regard by the learned Counsel appearing

⁹ (2000) 6 SCC 338

¹⁰ (2011) 11 SCC 556

¹¹ (2019) SCC OnLine SC 1053

¹² (2014) 11 SCC 709

¹³ (2020) 2 SCC 290

for the Applicants, it would be appropriate to refer to the Judgments relied upon, which elucidate the position of law with respect to both the aspects referred to above.

15. Insofar as the nature and extent of jurisdiction exercised by the Court while considering the question as to whether the Accused deserve to be discharged, there is a long line of Judgments that clarifies the position and by now the parameters for exercise of such jurisdiction have been settled and laid down in detail. This Court is referring to some of the Judgments relevant in this context.

16. In the case of ***Union of India vs. Prafulla Kumar Samal & anr.***¹⁴ the Hon'ble Supreme Court summarised some of the principles as follows:

“(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case

14 (1979) 3 SCC 4

would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

17. In the case of ***Niranjan Singh Karam Singh Punjabi*** (supra), the Hon’ble Supreme Court referred to the above-quoted principles laid down in the case of ***Union of India vs. Prafulla Kumar Samal & anr.*** (supra) and further held that at the stage of considering the question of discharge, the Court can certainly sift the evidence for a limited purpose, without marshalling the evidence with a view to separating the grain from the chaff. It was held in the said judgment that if the evidence which the prosecutor proposes to adduce to prove the guilt of the Accused is to be fully

accepted before cross-examination of witnesses and it does not show that the accused committed the offence, then it would not be justified to proceed with the trial.

18. In the case of *State of M.P. vs. Mohanlal Soni* (supra), the Hon'ble Supreme Court in this context held that while considering the material at the stage of framing of charges, the Court is not required to appreciate evidence to conclude whether the material produced is sufficient or not for convicting the accused. On the same lines, in the case of *Tej Bir & anr. vs. State of Haryana & anr.* (supra), the Hon'ble Supreme Court held that the test at this stage should be as to whether after accepting the charge as framed, any case was made out.

19. In the case of *Yogesh alias Sachin Jagdish Joshi vs. State of Maharashtra* (supra), the Hon'ble Supreme Court held that the test for determining a *prima facie* case against the Accused depends on the facts of each case and that by and large, if two views are equally possible and the Court is satisfied that the evidence produced on record gives rise to suspicion only, as distinguished from grave suspicion, the Court would be fully justified in discharging the accused.

20. In the case of *Sajjan Kumar vs. Central Bureau of Investigation*¹⁵, the Hon'ble Supreme Court took into consideration various judgments on this aspect of the matter pertaining to the scope of Sections 227 and 228 of the Cr.P.C., laying down the following principles:

¹⁵ (2010) 9 SCC 368

“21. Exercise of jurisdiction under Sections 227 and 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge: -

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr. P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a

charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

21. The said position of law stood reiterated in subsequent judgments of the Hon’ble Supreme Court in the case of ***State of Tamil Nadu vs. N. Suresh Rajan & Ors.*** (supra), ***Tarun Jit Tejpal vs. State of Goa*** (supra) and ***State (NCT of Delhi) vs. Shiv Charan Bansal & Ors.*** (supra).

22. On the second aspect of the matter, the learned Counsel appearing for the Applicants referred to Sections 141 and 142 read with Section 149 of the IPC and contended that the material on record must *prima facie* establish the presence of the Accused when the assembly turned unlawful.

23. In this context, in the case of ***Prabhakar Shankar Sawant and Ors. vs State of Maharashtra*** (supra), the Hon'ble Supreme Court held that the Accused could be held guilty under the said provisions if it was proved by the prosecution that they were members of the unlawful assembly at the time when the assembly became unlawful and evidence merely showing the accused as members of a morcha would not be enough.

24. In the case of ***Musa Khan vs. State of Maharashtra*** (supra), the Hon'ble Supreme Court held in the context of the aforesaid provisions that it was necessary to establish that the Accused were not only members of the unlawful assembly at some stage, but, at all crucial stages, sharing the common object of the assembly at all such stages.

25. In the case of the ***Akbar Sheikh & Ors. vs. State of West Bengal*** (supra), the Hon'ble Supreme Court held that to invoke the aforesaid provisions, the presence of the accused while the alleged offence was committed is a *sine qua non* to find the accused guilty of being member of an unlawful assembly. If the presence itself is doubtful, the question of finding accused guilty would not arise.

26. In the case of ***Jayendra Shantaram Dighe & Ors. vs. State of Maharashtra*** (supra), this Court considered the aforesaid Judgments of the Hon'ble Supreme Court and held that mere innocent presence in an assembly of persons would not attract the aforesaid provisions and that the accused could not be held guilty, unless it is proved that they were members of the assembly when it turned unlawful.

27. These were the judgments specifically relied upon by the learned Counsel appearing for the Applicants on the aspect of the ingredients of the offences. It is significant that all the said Judgments on this aspect of the matter were rendered by the Hon'ble Supreme Court and this Court after completion of trial and when appeals were under consideration.

28. The learned Counsel appearing for the Applicants submitted that even if that be so, the law laid down in the said Judgments was relevant for the present case, because at least *prima facie* the aforesaid ingredients of the offence would have to be demonstrated on the basis of the material on record, to justify sending the Applicants for trial. In this regard, as noted above, much emphasis was placed on the fact that no charge under Sections 34 and 120-B of the IPC was framed against the Applicants. The learned Counsel appearing for the Applicants also emphasized that Accused no. 1 has not applied for discharge and that he will be facing trial.

29. In the backdrop of the aforesaid position of law concerning both the aspects of the matter, the material brought on record along with the charge sheet needs to be appreciated to examine as to whether the Court below was justified in rejecting the claim of the Applicants that they deserved to be discharged and holding that they deserved to face trial for the aforesaid offences.

30. The learned Counsel appearing for the Applicants invited the attention of this Court to the statements of witnesses recorded during the course of investigation, particularly the statements of witnesses that find mention in the impugned order passed by the

Special Court. It was emphasized that the statements of the said witnesses do not even *prima facie* establish the fact as to whether the Applicants were members of the assembly when it turned unlawful and that, therefore, the impugned order was rendered erroneous. It was submitted that merely because the Applicants were present when the morcha moved towards the Police Station, could not be a ground to proceed against the Applicants.

31. It is significant that during the course of investigation, statements of as many as 186 witnesses were recorded. The statements of the witnesses are consistent in the manner in which the crowd of persons started gathering and reached the Police Station at Panaji in the form of a morcha. The statements of witnesses also indicate the manner in which some of the Accused persons addressed the gathering of persons, which ultimately led to violence in which about 41 police personnel were injured, many of whom were admitted to the hospital for treatment. Such statements also indicate the damage to public property during the course of violence.

32. But, in the light of the specific contentions raised on behalf of the Applicants, it needs to be examined as to whether the material on record *prima facie* shows the presence of the Applicants and such presence can be said to be as members of an unlawful assembly. It needs to be examined as to whether the material on record, accepted as it is, raises grave suspicion against the Applicants, justifying framing of charges for the Applicants to face trial. While examining the statements of witnesses and other material brought to the notice of this Court, the above-quoted

principles laid down by the Hon'ble Supreme Court will have to be applied. The said material needs to be appreciated to consider the broad probabilities of the case, without going into the question of whether the trial will end in conviction or acquittal. The emphasis is to be on the question as to whether a *prima facie* case is made out against the Applicants for the matter to proceed to trial.

33. In this context, a perusal of the statement of witness Nareshkumar Salgaonkar, a Police Constable, demonstrates that he was at the Police Station when the morcha of persons gathered opposite the Police Station. It is stated that the crowd gathered at the Police Station and at about 9.00 p.m., the Accused no.1 made a speech followed by speeches given by other Accused persons and that at about 9.30 p.m., the persons in the crowd started pelting stones and glass bottles towards the Police Station, ultimately leading to firing in the air, use of tear gas shells and lathi-charge to disperse the crowd of people.

34. The statement of witness Makrand Parsekar, Head Constable, gives the details as to the manner in which the crowd gathered outside the Police Station. The manner in which Accused no.1 gave his speech, provoking the people gathered in the assembly to commit violence. It was stated that Accused nos. 2, 3, 4, 5, 9 and 10 were present. It was further stated that at about 9.00 p.m., the Accused no.1 gave an ultimatum of half an hour for the Senior Police Officer to suspend Police Inspector Mr. Sudesh Naik of the Panaji Police Station, failing which he would take the mob inside the Police Station to teach a lesson to the Police. It is specifically stated by this witness that at around 9.30 p.m., in accordance with

the said ultimatum, the Accused nos. 1, 2, 3, 4, 6 and 9 along with others marched towards the Police Station. The crowd started pelting stones and glass bottles, which were brought by them in their vehicles.

35. This witness then stated that he had seen Accused no. 1 and his supporters at close quarters and that he would identify them with certainty. This witness has then referred to a photo album and he has identified the Applicants-Accused by referring to the photographs and marking them.

36. The statement of witness Tushar Lotliker, Police sub-Inspector, refers to the presence of the Applicants before this Court along with the Accused no.1 at the time of the incident. This witness also gives details as to the manner in which inflammatory speeches were made and specifically states that apart from Accused no. 1, such speeches were also made by Accused nos. 3, 4, 5 and 9. It is further stated by the aforesaid witness as to the manner in which the ultimatum was given to the Police and that the assembly of persons turned violent, resulting in attack on the Police Station causing damage to public property and injuries to police personnel.

37. The statement of witness Arjun Konduskar, Police sub-Inspector, shows that he has named the Applicants-Accused persons being present along with Accused no. 1 at the time of the incident and it is further stated that inflammatory speeches were given, not only by Accused no.1 but, by the other aforementioned Accused persons also. The time of delivery of the speeches and the

ultimatum issued to the Police was also reiterated in the statement of the said witness.

38. The statement of witness Arun Bakre, the Police Constable shows not only the presence of Accused no.1 but also Accused nos. 2 and 3. This witness has described the manner in which the violence erupted and how he suffered a serious injury to his leg.

39. This Court has also perused the statements of other witnesses wherein the incident has been described in a similar manner and the presence of the Applicants-Accused persons is clearly stated.

40. The statements of witnesses indicate that while the assembly of persons gathered outside the Police Station from the evening at about 7.30 p.m. onwards, violence actually erupted around 9.30 p.m. It appears that there was a build-up of the assembly of persons whereby the Police Station was surrounded and after speeches were given by the Accused no.1 and the aforesaid named Accused persons, the persons in the assembly turned violent.

41. It is in the backdrop of the aforesaid statements made by the witnesses that the learned Counsel appearing for the Applicants have placed much emphasis on the aspect that the assembly of persons outside the Police Station was not unlawful to start with and that at some point in time, it turned into an unlawful assembly. The learned Counsel appearing for the Applicants conceded that as per explanation to Section 141, which defines unlawful assembly, the assembly which is not unlawful when it assembles, may subsequently become an unlawful assembly.

42. The contention on behalf of the Applicants is that even if the presence of the Applicants, as stated by the witnesses, and their names find mention in the statements recorded during the course of investigation, there is absence of even *prima facie* material to show the presence of the Applicants after the assembly turned into an unlawful assembly. It is claimed that the statements of witnesses and the material on record merely indicate the presence of the Applicants in the assembly of persons when the morcha gathered outside the Police Station, but the material clearly fell short of *prima facie* indicating that the Applicants were present when there was a transition of the assembly of persons into an unlawful assembly, as defined under Section 141 of the IPC.

43. It is in this context that much emphasis was placed by the learned Counsel appearing for the Applicants on the aforesaid Judgments of the Hon'ble Supreme Court, wherein the presence of the Accused when the assembly turned unlawful is held to be a *sine qua non* for demonstrating the essential ingredient of the said offence.

44. This Court is of the opinion that at the present stage, even while examining as to whether the essential ingredients of the said offences are made out against the Applicants or not, this Court has to only sift through the material on record to consider the broad probability regarding the presence of the Applicants in the assembly, which could be termed to be an unlawful assembly. This Court is required to arrive at *prima facie* finding on the aforesaid aspect of the matter. It is not as if this Court is required to go into

the question as to whether the material on record will lead to the conviction of the Applicants upon conclusion of the trial.

45. Upon considering the statements of the witnesses and applying the principles laid down by the Hon'ble Supreme Court in the above-quoted Judgments pertaining to the scope of Sections 227 and 228 of Cr.P.C., this Court finds that there is sufficient *prima facie* material to hold that the Applicants deserve to face trial and that the material placed on record accepted as it is, does make out a *prima facie* case regarding presence of the Applicants as part of the unlawful assembly. A perusal of the statement of the witnesses shows that the built-up to the incident is described in detail, undoubtedly indicating that initially when the assembly of persons started gathering, it appeared to be an assembly seeking certain demands for redressal of grievances. In the absence of any order under Section 144 of Cr.P.C., such assembly of persons could not be labelled as an unlawful assembly. In this context, the learned Senior Counsel appearing for the Applicants are justified in referring to the judgment of the Hon'ble Supreme Court in the case of ***Ramlila Maidan Incident, In Re*** (supra), emphasising upon the rights of the citizens under Article 19(1)(a) and (b) of the Constitution of India, to hold such public meetings, morchas, rallies and demonstrations to agitate peacefully in respect of their grievance. But, in the present case, there is sufficient material on record to indicate that the said assembly of persons transformed into an unlawful assembly as defined under Section 141 of the IPC. The statements of witnesses trace the timeline to indicate as to how the assembly of persons transformed into an unlawful assembly, pursuant to the speeches given by the Accused no.1 and other

accused persons, some of whom are Applicants before this Court. The witnesses have stated as to the manner in which the Accused persons rushed towards the Police Station and there was pelting of stones, glass bottles and other missiles leading to injuries to police personnel and damage to public property. This Court is of the opinion that there is *prima facie* material to indicate the presence of the Applicants-Accused persons after the assembly of persons transformed into an unlawful assembly. There is a reference to photographs which one of the witnesses has assigned numbers and marked them during the course of investigations. These photographs read with the statements of the witnesses, do make out a *prima facie* case against the Applicants-Accused persons as regards their presence when the assembly turned unlawful, leading to violence and the aforesaid consequences.

46. The material on record is enough on broad probabilities to indicate that a *prima facie* case is indeed made out by the Applicants for proceeding to trial, as grave suspicion is indeed raised about their involvement in the incident in question.

47. As regards the ingredients of the offences, it is significant that in the judgments relied upon by the learned Counsel appearing for the Applicants, the Hon'ble Supreme Court and this Court were concerned with cases where the matters had gone to trial and orders of conviction and sentencing were subject matter of challenge.

48. In the present case, this Court on the touchstone of the principles laid down by the Hon'ble Supreme Court, at this stage, is required to only sift the material to reach a *prima facie* conclusion

regarding the aforesaid ingredients of the offences and to render a finding as to whether the Applicants-Accused persons need to face trial. A perusal of the material on record, does indicate that the Applicants-Accused persons do not deserve to be discharged at this stage itself and that the material on record is enough to indicate that they need to face trial. It is a different matter that after the trial is concluded and the prosecution has led its evidence, which is tested on cross-examination and also in the light of defence evidence, if any, the Applicants-Accused persons would be convicted or not. This Court, at this stage, is not required to see whether the trial will end in conviction or acquittal.

49. There is also no substance in the contention raised on behalf of the Applicants that four persons apprehended from the spot of the incident were ultimately not charge-sheeted. The said fact in itself cannot inure to the benefit of the Applicants as this Court has come to the conclusion that *prima facie* case is made out against the Applicants-Accused persons. Equally, the applicants are not justified in claiming that they deserve to be discharged merely because no charge is framed against them under section 34 or 120-B of the IPC. The crucial aspect in the present case is, as to whether the presence of the applicants as members of the unlawful assembly is *prima facie* made out.

50. There is also no substance in the contention raised on behalf of the Applicants that the material on record may indicate the role of Accused no.1 and since he has not applied for discharge and he is ready to face trial, the said factor ought to be taken into account by this Court. While examining as to whether the Applicants before

this Court deserve to face trial or not, this Court has appreciated the material on record, only in the context of the Applicants and there is no comment required to be made on the alleged role of Accused no.1.

51. A perusal of the order passed by the Special Court would show that the material on record was considered and by applying the position of law concerning the aspects to be taken into consideration at this stage, the Special Court correctly held that there was sufficient *prima facie* material on record to frame charges against the Applicants-Accused persons for the aforesaid offences.

52. Hence, it is found that there is no substance in the present applications. Accordingly, the applications are dismissed.

53. There is an interim order operating in favour of the Applicants since the year 2014. The said interim order stands vacated.

54. Considering the directions of the Hon'ble Supreme Court to expedite trials involving Members of Parliament/Members of Legislative Assemblies, the Special Court in the present case, is directed to expedite the trial.

MANISH PITALE, J.

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Date : 22nd December, 2021.

JUDGMENT CONTINUED

55. Upon pronouncement of the judgment, Mr. Vibhav Amonkar, the learned Counsel appearing for the Applicants, makes a request for extension of stay operating in these applications for a period of four weeks to enable the Applicants to approach the Hon'ble Supreme Court.

56. The said request cannot be granted for the reason that this Court has already found that a *prima facie* case is made out for the Applicants to face trial.

57. Moreover, the Hon'ble Supreme Court has directed that trials involving Members of Parliament/Members of Legislative Assemblies are to be expedited. Therefore, the prayer is rejected.

MANISH PITALE, J.

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