

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.6111 OF 2019

Sheena Lakhani,]
Flat No.305, Sai Sapphire CHS, Powai]
Vihar Complex, Powari – 400 076.] ... Petitioner

Versus

1. The State of Maharashtra]
(At the instance of Amboli Police]
Station in C.R. No.371 of 2019).]
2. Sadanad Krushna Surve]
R/at: 302, Saideep Co-op. Hsg.]
Society, Near Bharati Park, Mira]
Road (East), Thane – 401 107.] ... Respondents

...

Mr. Ashish Deep Verma i/b Mr. Vijay S. Thakur for the
petitioners.

Mr. J.P. Yagnik, A.P.P. for respondent-State.

...

CORAM : S.S. SHINDE &
MANISH PITALE, JJ.

RESERVED ON : 09TH MARCH, 2021

PRONOUNCED ON : 12TH MARCH, 2021.

JUDGMENT :- [Per: Manish Pitale, J.]

1. Rule. Rule made returnable forthwith. With the consent of the rival parties, heard finally.

2. By this writ petition, the petitioner has prayed for quashing of the First Information Report (“FIR”) and the charge-sheet. The FIR bearing C.R. No.371 of 2019 dated 02/10/2019 is registered against the petitioner at Amboli Police Station for offences under Sections 353, 186, 427 and 506 of the Indian Penal Code (“IPC”). Pursuant to the investigation initiated on the said FIR, the charge-sheet came to be filed in the court of Metropolitan Magistrate, 66th Court at Andheri, Mumbai.

3. Respondent No.2, a junior supervisor of the Brihanmumbai Municipal Corporation (“BMC”) had lodged a complaint leading to the registration of the FIR.

4. The petitioner is a Non Resident Indian from Canada holding an Overseas Citizen of India Card. As per the complaint lodged by respondent No.2, the said respondent was on election duty at the relevant time on 01/10/2019 when the alleged incident is said to have occurred. According to respondent No.2, when he was on duty, in the context of ensuing election and

barricading was done, the petitioner approached in her car and she was asked to stop her vehicle for checking. But, the petitioner allegedly did not cooperate with respondent No.2 and others on election duty and, instead, she said that she had nothing to do with the election and in this situation, she was allowed to leave.

5. It is alleged that thereafter, at about 1.50 a.m. on 02/10/2019, the petitioner returned with two persons on a motorcycle and aggressively went towards Kasim Javed, a videographer with the team led by respondent No.2. It is alleged that she not only physically pushed said Javed but also took possession of the video camera. She was told that the camera was being used for election duty but, the petitioner was not listening to the police personnel on duty including the lady police at the spot. Even when the two persons, who had come with the petitioner asked her to return the camera, she did not do so. When respondent No.2 tried to reason with the petitioner that if she had any problem, she should approach the local police, the petitioner allegedly behaved in an aggressive manner with respondent No.2 and she took out the memory card from the video camera thereby causing damage to the camera. It was alleged that thereafter, help was sought by dialing 100, when lady police personnel came from Amboli Police Station and the petitioner was taken to the police station and the complaint of respondent No.2 came to be registered. It is on the basis of this

AJN

complaint that the aforesaid FIR stood registered against the petitioner.

6. During the course of investigation, statements were recorded including that of respondent No.2. The said statements were similar to the statement on the basis of which the FIR was registered. The statement of the said Javed was also recorded, which was on the same lines as that of respondent No.2. On completion of the investigation, charge-sheet was filed against the petitioner.

7. Mr. Verma, learned counsel appearing for the petitioner submitted that registration of offences in the present case against the petitioner was misconceived because even if the statements of respondent No.2 and other alleged witnesses were to be considered, it was clear that the said Javed could not be said to be a public servant. It was evident from the material on record that the said Javed was a private person engaged on contract for videography during the election period. On this basis, it was submitted that the *sine-qua-non* for registering offences under Sections 186 and 353 of the IPC was absent and, therefore, the said offences could not have been registered against the petitioner. As regards other offences, apart from denying the incident in question, it was submitted that the alleged offences were non-cognizable in nature. On this basis, learned counsel appearing for

the petitioner submitted that the FIR and the charge-sheet deserved to be quashed. Reliance was placed on the judgments of this court in the case of Aniruddha s/o. Ganesh Pathak v. State of Maharashtra¹, Kundan s/o. Khanderao Dhande v. Vasudeo s/o. Nivruti Fegde² and order passed by the Madras High Court in the case of Jayaseeli v. State³.

8. On the other hand, Mr. Yagnik, learned A.P.P. appearing for the State submitted that the ingredients of the offences were made out in the complaint and, therefore, there was no substance in the contentions raised on behalf of the petitioner. It was submitted that the person, who was assaulted by the petitioner was performing election duty on the instructions of the public servant and, therefore, the offences were correctly registered against the petitioner. It was submitted that since the charge-sheet was now filed pursuant to completion of investigation, this court ought not to interfere with further proceedings in the matter.

9. Having heard learned counsel appearing for the rival parties and considering the offences alleged against the petitioner, we are of the opinion that the basic requirement of registration of cognizable offences under Sections 186 and 353 of the IPC is absent in the case. There can be no doubt about the fact that for registration of offences under the said provisions, the person who

1 Judgment dated 21/11/2009 in Criminal Application No.2219 of 2008

2 Judgment dated 25/10/2016 in Criminal Application No.4527 of 2016

3 Order dated 02/02/2010 in Criminal Revision Case No.190 of 2008

has been obstructed from discharging his or her function has to have the status of a public servant. In the present case, although the complaint is lodged by respondent No.2, who would qualify as public servant, being a junior supervisor in the BMC and performing election duty, the person who was allegedly assaulted viz. Javed is admittedly a private person engaged only on contract of videography in the context of the election that was to take place. Neither the complaint leading to registration of the FIR nor the statements made by the alleged witnesses indicate that the said Javed could be said to be a public servant. We have perused the entire material brought on record along with the charge-sheet but, there is nothing on record to show that the said Javed is a public servant. It becomes evident from the material on record that the said Javed, who was engaged on contract for undertaking videography, by no stretch of imagination, can be said to be a public servant. The contention of learned A.P.P. that since he was working on behalf of the public servant, the ingredients of the said offences are made out, is not acceptable in the facts of the present case.

10. Sections 186 and 353 of the IPC read as follows:

“186. Obstructing public servant in discharge of public functions— Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with

imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

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.”*

11. Bare perusal of the aforesaid provisions would show that the fundamental requirement for applying the said provisions is that the person obstructed from performing duty has to be a public servant. Since this requirement is not satisfied in the present case, the offences under the said provisions could not have been registered against the petitioner. Even if it was to be accepted that the incident as alleged, had happened, all other offences alleged against the petitioner are non-cognizable in nature. In the face of these facts, the FIR and the charge-sheet in the present case deserve to be quashed.

12. Apart from this, the nature of complaint filed by respondent
AJN

No.2 does not divulge physical force applied by the petitioner against respondent No.2. Therefore, learned counsel for the petitioner is justified in relying upon the judgments cited above. In view of the above, we are of the opinion that the petitioner has made out a case for grant of relief as prayed in the present writ petition. Accordingly, the writ petition is allowed. FIR bearing C.R. No.371 of 2019 dated 02/10/2019 registered at Amboli Police Station and the charge-sheet arising out of the aforesaid FIR filed before the Metropolitan Magistrate, 66th Court at Andheri, Mumbai are quashed.

13. Rule made absolute in the above terms. Writ petition is disposed of accordingly.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)