

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.315 OF 2021

1. Sandeep Badriprasad Agrawal,
Aged about 44 years,
R/o. Smruti Agrasen Road,
Dharampeth, Nagpur.

2. Mohan Govind Kothekar,
Aged about 59 years,
R/o. Plot No.32,
Vijay Nagar, Near IT Park,
Pratap Nagar, Nagpur.

....APPLICANTS

// VERSUS //

State of Maharashtra, through
P. S.O., Sitabuldi Police Station,
Nagpur.

.... NON-APPLICANT

Ms. Radhika D. Raskar, Advocate for the applicants.

Shri S. P. Deshpande, A.P.P. for the non-applicant/State.

**CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATE : 23.02.2021.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard.

2. Rule. Rule is made returnable forthwith.

3. By this application under Section 482 of the Code of Criminal Procedure, the applicants are challenging registration of the First Information Report No.307/2020 registered with the non-

applicant-Police Station dated 12.07.2020 for the offences punishable under Sections 187, 188, 269, 270 of the Indian Penal Code and Sections 135 read with Sections 37(1), 37(3) of the Maharashtra Police Act, 1951.

4. The First Information Report came to be registered against the applicants with the accusations that the applicants violated the order dated 30.06.2020 and 06.07.2020 issued in exercise of power conferred by sub Section (1) and sub Section (3) of Section 37 of the Maharashtra Police Act, 1951 and has carried out protest, therefore offences under Sections 187, 188, 269, 270 of the Indian Penal Code and Section 135 read with Sections 37(1) and 37(3) of the Maharashtra Police Act, 1951 are registered against the applicants.

5. We have carefully considered the allegations in the First Information Report. The essential ingredients of Section 188 of the Indian Penal Code is that the disobedience caused by a person causes obstruction, annoyance or injury to any person lawfully employed. From the allegations in the First Information Report, there is no allegations that the applicants knowingly caused any act which would cause obstruction, annoyance or injury to any person lawfully employed.

6. In so far as Sections 269 and 270 of Indian Penal Code is concerned, the said Section reads as under :-

“269. Negligent act likely to spread infection of disease dangerous to life.—Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

270. Malignant act likely to spread infection of disease dangerous to life.—Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

7. To attract ingredients of Sections 269 and 270, it is necessary that the person to commit any act which he knows is likely to spread infection of any disease dangerous to lives. There is no allegation against the applicants that the act of negligence committed by the applicants was likely to spread infection of any disease dangerous to life or the applicants have done any act which was likely to spread infection of disease dangerous to life. In absence of such allegations in the First Information Report, ingredients of offences alleged against the applicants are not fulfilled.

8. On overall consideration of the allegations in the First Information Report, we are satisfied that the allegations even if accepted as correct, same does not fulfill the offences alleged against the applicants. Therefore, the continuation of the First Information Report against the applicants would amount to abuse of process of Court.

9. We therefore, pass the following order.

The First Information Report bearing No.307/2020 registered with the Non-applicant – Police Station against the applicants for the offences punishable under Sections 187, 188, 269, 270 of the Indian Penal Code and Sections 135 read with Sections 37(1), 37(3) of the Maharashtra Police Act, 1951 is quashed and set aside.

Rule is made absolute in the above terms.

JUDGE

JUDGE