

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.846 OF 2020

Shankarrao s/o Lalji Ade
Age: 75 years, Occu.: Pensioner,
So also holding the post of
Upasarpanch of village Panchayat
Bhategaon,
R/o. Bhategaon, Tq. Kalamnuri,
Dist. Hingoli

.. Applicant

Versus

1. The State of Maharashtra
Through Police Station Officer,
Police Station Hingoli (Town),
Hingoli, Tq. & Dist. Hingoli.
2. Manohar s/o Laxmanrao Khillari,
Age: 54 years, Occu.: Govt. Service,
As Block Development Officer,
Panchayat Samiti, Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli,
R/o Goregaon, Tq. Sengaon,
Dist. Hingoli

.. Respondents

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Mr. H. V. Patil, Advocate for applicant.

Mr. S. J. Salgare, APP for respondent No.1 – State.

Mr. V. P. Sawant, Advocate for respondent No.2 (Appointed).

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**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 16th September, 2022

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Present application has been filed under Section 482 of the
Code of Criminal Procedure (for short "Cr.P.C.") for quashing the

First Information Report (for short "FIR") vide Crime No.75 of 2020 registered with Hingoli (Town) Police Station, Dist. Hingoli for the offences punishable under Sections 353, 504, 506 of Indian Penal Code (for short "IPC") as well as further proceedings in R.C.C. No.287 of 2020 pending before the learned Judicial Magistrate First Class, Court No.1, Hingoli.

2. The applicant was holding the post of Upasarpanch of village Bhategaon, Tq. Kalamnuri, Dist. Hingoli. Respondent No.2 is the original informant serving as Block Development Officer. On the basis of the FIR lodged by respondent No.2, the said offence was registered and now after the investigation, charge-sheet has been filed.

3. Heard learned Advocate Mr. H. V. Patil for the applicant, learned APP Mr. S. J. Salgare for respondent No.1 – State and learned Advocate Mr. V. P. Sawant, who is appointed to represent the cause of respondent No.2.

4. It has been vehemently submitted on behalf of the applicant that the applicant is the person who had made various complaints against respondent No.2 in respect of the behaviour of respondent No.2. Departmental Enquiry was ordered to be held and thereby the Deputy Collector, (Employment Guarantee Scheme), Hingoli had given letter to Chief Executive Officer, Zilla Parishad, Hingoli on

23.05.2017 that he should make enquiry against respondent No.2 and give the report. Thereafter, the enquiry was made and report was given on 16.10.2017 stating that there is substance in the allegations made against respondent No.2. Thereafter, the Departmental Enquiry has been initiated against him. However, it is still pending. This shows that respondent No.2 had grudge against the applicant.

5. Learned advocate for the applicant further submits that the FIR has been lodged stating that when respondent No.2 had gone to Zilla Parishad, Hingoli on 12.02.2020 at about 5.00 p.m. and he was talking with Deputy C.E.O. Shri. Nitin Datal, at that time, the applicant went there and started asking as to why he is not carrying out work and it was told that the Block Development Officer of Kalamnuri is "हरामखोर". It is then stated that by abusing respondent No.2, the applicant had restrained him from carrying out his Government Duty and also gave him threat to see. It is then stated that the driver of the Government vehicle of respondent No.2 had seen the incident. Statements of Nitin Datal and Tukaram Hamane serving in Deputy C.E.O. office and Sunil Gabhane, who is the driver of the official vehicle of the informant, have been recorded. Even if we consider the statements of the witnesses as it is, yet it cannot attract the provisions of Section 353 of IPC. The applicant had not touched the informant in any manner. Therefore, it cannot

be said that he had used criminal force. When the FIR has been lodged with ulterior motive, it deserves to be quashed and set aside so also the entire proceedings needs to be quashed and set aside.

6. Per contra, learned APP as well as learned Advocate Mr. V. P. Sawant, who is appointed to represent the cause of respondent No.2, objected the application and submitted that the contents of the FIR as well as the entire proceedings would definitely attract the ingredients of the offence punishable under Sections 353, 504, 506 of IPC. Respondent No.2 is facing the Departmental Enquiry, but that cannot be taken as a ground to support the contention of the applicant that the FIR is tainted with *mala fides*. The complaint applications were filed by the applicant against respondent No.2 since 2017 and if respondent No.2 wanted to frame the applicant, he would have framed him earlier. The contents of the FIR have been supported by the witnesses and, therefore, when the *prima facie* evidence is against the applicant, this cannot be taken as a fit case where the inherent powers of this Court can be used.

7. As the contents of the FIR have already been narrated, they are not reproduced. We were required to see whether the contents of the FIR as well as entire proceedings attract the ingredients of the offence with which the charge-sheet has been filed. However, at the cost of repetition, it can be said that the entire episode is

stated to have occurred in the office of Nitin Datal, Deputy C.E.O. (Panchayat) Zilla Parishad, Hingoli. No doubt, there appears to be a meeting called by C.E.O. which the informant was supposed to attend and, therefore, the presence of the informant in the said office may be natural or it cannot be doubted, however, how the applicant could have noted that the informant is inside the office of Deputy C.E.O. is a question, of which we cannot find answer in the entire charge-sheet. Another objectionable part is why the driver of the official vehicle would remain inside the cabin or office of Deputy C.E.O. and he would hear the dialogues between the informant - respondent No.2 and the applicant, is also a question. If we consider the spot panchanama, then it appears that the said office consist of a big room and there were about 7 tables and chairs kept in the same. Even if for the sake of arguments we accept that for some reason the applicant had gone there and he had seen the informant, yet what has been stated by the informant would attract the ingredients of Section 353 of IPC, for which Section 351 of IPC is required to be considered. Section 351 defines "assault", which reads thus :-

"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. Thus, it is to be noted that the essential action to term it as assault should be from 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 the said person who is showing such gesture or made preparation would use criminal force. Here, no such gesture or preparation has been stated by respondent No.2 in his FIR, nor it is stated so by any of the witnesses. If we consider the illustrations to Section 351 of IPC, illustration 'A' indicates that there was shaking of fist. In illustration 'B' there was unloosening of muzzle of a ferocious dog thereby the dog would attack another person. That means, some action apart from words is required on the part of the accused. In illustration 'C' also, after taking up a stick, it was uttered that he would give beating. Here, in this case, there was nothing with the applicant, nor he had made any kind of gesture and under such circumstance, mere words unaccompanied by any gesture or preparation will not amount to assault or criminal force and, therefore, the ingredients of Section 353 of IPC are not made out.

9. The Hon'ble Supreme Court in ***Ishwar Pratap Singh vs. State of U.P., (2018) 13 SCC 612***, held that there is no prohibition under the law for quashing the charge-sheet in part. It was also observed that, "*In a petition filed under Section 482 of the Code of Criminal Procedure, the High Court is required to examine as to whether its intervention is required for prevention of abuse of process of law or otherwise to secure the ends of justice.*"

Under such circumstance, the case is made out to quash the First Information Report and charge sheet in part by exercising our powers under Section 482 of the Code of Criminal Procedure.

10. For the aforesaid reasons, following order is passed :-

ORDER

I) The application stands partly allowed.

II) The FIR bearing Crime No.75 of 2020 dated 13.02.2020 registered with Hingoli (Town) Police Station, Dist. Hingoli, for the offence punishable under Sections 353, 504 and 506 of IPC and the further proceedings in R.C.C. No.287 of 2020 pending before the learned Judicial Magistrate First Class, Court No.1, Hingoli, Dist. Hingoli stand quashed and set aside to the extent of offence punishable under Section 353 of IPC, as against the present applicant.

III) It is clarified that the matter to proceed under Sections 504 and 506 of IPC.

IV) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.5,000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm