

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1658 OF 2020

LAXMIKANT S/O. KRUSHNAKUMAR THETE

VERSUS

THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicant : Mr. Dhanraj S. Ingole h/f Mr. N. S. Ghanekar

APP for Respondent/State : Mr. R. V. Dasalkar

Advocate for Respondent No.2 : Mr. U. S. Patil

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**CORAM : SARANG V. KOTWAL &
BHARAT P. DESHPANDE, JJ.**

DATE : 24th JUNE 2022.

Per Court :

1. Leave to amend is granted. Amendment to be carried out forthwith.

2. This is an application for quashing and setting aside the proceedings in S.C.C. No. 56/2016, pending before the Judicial Magistrate First Class, Phulambri under Section 3 of Prevention of Damage to Public Property Act (hereinafter called 'the said Act') and under Section 427 of the Indian Penal Code ('IPC' for short), arising out

of Crime No. 28/2016 registered with Phulambri Police Station, Aurangabad.

3. The FIR as well as the charge-sheet shows that on 03.08.2015, while work of laying cable line was going on, the adjoining water pipe line was damaged at two places. Because of that the water supply to Phulambri Village was disrupted for about four days. The damage to the pipe line was to the tune of Rs. 10,000/-. Therefore, FIR is lodged. The statements recorded during investigation show that the labourers had damaged the water pipe line at two places.

4. Learned Counsel for the applicant submitted that the applicant is Contractor and he was not present at the spot, when the damage was caused. It was caused by the labourers. The act would not fall within the meaning of the said Act and therefore proceedings are required to be quashed and set aside. He further submitted that Nagar Panchayat of Phulambri had imposed fine of Rs. 25000/- for the damage caused. The applicant has paid that fine, which is evident from the receipt. It is annexed to the application.

5. Learned APP relied on the charge-sheet. Learned Counsel for the Respondent No.2 and learned APP opposed this application. We have considered these submissions. The offence under Section 2 and 3 of the said Act reads thus;

Section:2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “mischief” shall have the same meaning as in section 425 of the Indian Penal Code (45 of 1860);

(b) “public property” means any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of—

(i) the Central Government; or

(ii) any State Government; or

(iii) any local authority; or

(iv) any corporation established by, or under, a Central, Provincial or State Act; or

(v) any company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in this behalf: Provided that the Central Government shall not specify any institution, concern or undertaking under this sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments.

Section: 3. Mischief causing damage to public property.—

(1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being—

(a) any building, installation or other property used in

connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c) any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of tele-communications, or any building, installation or other property used in connection therewith, shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine: Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

. The mischief mentioned in this act, therefore has the same meaning as in Section 425 of the IPC, which reads thus :

“Section:425. Mischief.—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.
Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.”

6. The main ingredients of Section 425 of IPC, are that the offender must have intent or knowledge that he is likely to cause wrongful loss or damage to the public or to any person. In the present case, the

applicant was not present at the spot. The act was attributed to the labourers, employed by the Applicant. From the allegations, it does not appear that the act attributed to the said employee was done with the intention or knowledge, as mentioned under Section 425 of IPC. Besides this, it is admitted fact that the applicant has paid the amount of Rs.25000/-, as demanded by the Nagar Panchayat, Phulambri. In this view of the matter, continuation of criminal proceedings against the Applicant will serve no purpose. Therefore, these proceedings can be quashed. Hence the following order.

ORDER

- (i) The Criminal Application is allowed in terms of prayer clause 'B'.
- (ii) The proceedings pending vide S.C.C. No. 56/2016, on the file of Judicial Magistrate First Class, Phulambri, against the Applicant, is quashed and set aside.
- (iii) The Criminal Application is disposed of.

[BHARAT P. DESHPANDE, J.]

[SARANG V. KOTWAL, J.]

Najeeb...