

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1134 OF 2021

Raosaheb Nivrutti Jejurkar,
Age 50 yrs., Occ. Service,
R/o Mali Galli, at Post Dadh,
Tq. Rahata, Dist. Ahmednagar.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra,
Through Police Station, Loni,
Tq. Rahata, Dist. Ahmednagar.
- 2 Santosh Ramnath Lande,
Age Major, Occ. Police Constable,
R/o Loni Police Station,
Tq. Rahata, Dist. Ahmednagar.

... Respondents

...

Mrs. Rashmi S. Kulkarni, Advocate for the petitioner

Mr. A.M. Phule, APP for respondent Nos.1 and 2

...

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

RESERVED ON : 02nd AUGUST, 2022

PRONOUNCED ON : 13th SEPTEMBER, 2022

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The petitioner is seeking quashment of the First Information Report lodged against him at the behest of respondent No.2, who was the Police Constable. The First Information Report was registered vide Crime No.300/2021 with Loni Police Station, Tq. Rahata, Dist. Ahmednagar on 17.07.2021, for the offence punishable under Sections 353, 323, 504, 506, 188, 332 of the Indian Penal Code, 1860, under Sections 37(1) and 37(3) of the Maharashtra Police Act, 1951 and under Sections 2, 3 and 4 of the Epidemic Diseases Act, 1897. After the investigation charge sheet has been filed vide Regular Criminal Case No.714/2021 before learned Judicial Magistrate First Class, Rahata and, therefore, the petitioner is seeking quashment of the First Information Report as well as charge sheet.

3 Heard learned Advocate Mrs. Rashmi S. Kulkarni for the petitioner and learned APP Mr. A.M. Phule for respondent Nos.1 and 2.

4 It has been vehemently submitted on behalf of the petitioner that perusal of the petition would show that some incident is stated to have taken

place between the informant and accused No.1. Though the surname of accused No.1 is same that of the applicant, there is nothing on record which has been produced on record by the prosecution that the petitioner has any right in the said shop. Accused No.1 runs a grocery shop by name “ वीरभद्र किराणा दुकान व जनरल स्टोअर्स”. According to the police, accused No.1 had kept open his shop around 16.45 hours in contravention of the order passed by District Collector, Ahmednagar, as it was still a Covid situation and there were restrictions imposed. Accused No.1 had behaved arrogantly with the informant and another police person along with him and then it is stated that accused No.1 had called accused Nos.2 and 3. Those three persons had manhandled the informant and had given threat that they would be involved in false case. Informant says that many persons from the village then gathered along with the petitioner and petitioner is a News Reporter. It is then stated that petitioner told the informant that when other shops are open they should also be closed and then the shop of the accused No.1 should be closed. He made allegations that the informant and police are not paying attention as to what is happening in the village. He would see how the police take accused No.1 and by abusing he gave threat that he would see that the informant and other police persons who were present there are suspended. He also gave threat to give reporting of the news.

5 The charge sheet would show that only statements of witnesses who are police have been recorded and no statement of the other persons who had gathered at the spot has been recorded. The acts alleged against the petitioner do not attract the provisions of Sections 353, 332, 323 of the Indian Penal Code and also the other sections which have been invoked. It would be a futile exercise to ask him to face the trial.

6 Learned Advocate for the petitioner has relied on **Fakruddin Ahmad Lohar vs. The State of Maharashtra and others, 2017 ALL M.R. (Cri.) 3550**, wherein the Division Bench of this Court after considering the facts of the case and the decision of the Hon'ble Apex Court in **Manik Taneja and another vs. State of Karnataka and another, AIR 2015 SC (Supp.) 671** has held that for offence under Section 353 of the Indian Penal Code the accused should have assaulted the public servant or used the criminal force with intention to prevent or deter the said public servant from discharging his duty as such public servant. Further, it is held that to attract the offence under Section 506 of the Indian Penal Code essential ingredients are that the accused person should have committed offence of criminal intimidation. Here, in this case, both are absent.

7 Per contra, the learned APP strongly objected the writ petition

and submitted that as per the prosecution story, along with the informant other police were also present at the spot and their statements have been recorded and all of them have stated that such incident has taken place. If at all the petitioner is taking defence of *alibi*, then, it is for him to prove it and it cannot be considered here. The language which was allegedly used by the petitioner was sufficient to attract Sections 504 and 506 of the Indian Penal Code. In fact, if he was not concerned with the shop of accused No.1, he ought not to have interfered. The evidence that is collected shows that informant has sustained two simple injuries. No doubt, Sections 353 and 332 may be against the accused Nos.1 to 3, but, at the same time, the present accused by his acts had committed offence under Sections 504, 506 of the Indian Penal Code. This is not a fit case where the First Information Report as well as charge sheet should be quashed and set aside.

8 Since the prosecution story is already narrated, it is not reproduced. When the informant was on patrolling duty along with other police persons they had found that accused No.1's shop was open. When they asked him to close it down, the further incident has taken place. No doubt, at that time, it appears that the present petitioner was not present and he came a little bit late along with other persons from the village. But then, what the petitioner had stated has been told by the informant as well as other

witnesses whose statements under Section 161 of the Code of Criminal Procedure have been recorded. Merely because the statements of the villagers who were present at the spot have not been recorded we cannot at this stage quash the First Information Report as well as entire proceedings. Further, we cannot discard the statements of the police persons, whose statements have been recorded under Section 161 of the Code of Criminal Procedure by branding them as interested witnesses. A police person is equally competent witness and his evidence will have to be scrutinized by the Trial Courts at the time of the trial and Judgment. Whether it was necessary for the petitioner to speak at that moment, was a question, and even if he would have spoken, what could have been the language. He could not have abused the police persons on duty nor he could have given threat to them by saying that since he is a News Reporter he would meet the Superintendent of Police and see that they are terminated or dismissed from service. Definitely, that amounts to criminal intimidation and the abuses those have been stated would attract Section 504 of the Indian Penal Code. At this stage, this Court is required to consider the prima facie case and perusal of the entire charge sheet it can be certainly said that there is prima facie evidence against the petitioner. If at all he wants to take defence of *alibi*, it is for him to prove it at the time of trial. Another fact to be noted is that the incident has been videographed and the footage of the said videograph appears to have been

seized. Even the certificate under Section 65(B) of the Indian Evidence Act has been given by the appropriate person. Therefore, when there is evidence against the petitioner, this cannot be considered to be a fit case where this Court should exercise constitutional powers under Article 226 of the Constitution of India or inherent powers under Section 482 of the Code of Criminal Procedure. The case does not fall within the parameters laid down in **State of Haryana and others vs. Ch. Bhajan Lal and others**, reported in **AIR 1992 SC 604**. The decisions relied by the learned Advocate for the petitioner cannot be disputed, however, the facts of the case do attract ingredients of Sections 504 and 506 of the Indian Penal Code against the petitioner. Further, it can also be observed that the charge would be framed by the Trial Court. Taking into consideration the role allegedly played by a particular accused and at that point of time the petitioner may point out which section is made out and which ingredients are not fulfilled, so that the charge should not be framed against him under that section. Certainly, when case is made out in respect of certain offences, the entire charge sheet as well as First Information Report cannot be quashed and set aside. Writ petition stands dismissed. Rule stands discharged.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)