

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.6069 OF 2019

Abhishek Ajaykumar Singh	... Petitioner
Vs.	
The State of Maharashtra	... Respondent

Ms. Rohini Wagh a/w Mr. Aalekh Wagh, for Petitioner.
Mr. J. P. Yagnik, APP for Respondent - State.

CORAM :	PRASANNA B. VARALE & S. M. MODAK, JJ.
----------------	--

DATE :	22rd MARCH, 2022
---------------	------------------------------------

P. C. :-

1. Heard Ms. Rohini Wagh, the learned advocate for the Petitioner/Orig. Accused No.2 and Mr. J. P. Yagnik, the learned APP for the Respondent-State. By consent, we have taken up this petition for final hearing.

2. Learned advocate for the Petitioner invited our attention to the averments in the First Information Report and statement of witnesses filed along with the Charge-sheet. Her main argument is that ingredients of Section 353 of IPC are not disclosed. She has also submitted that in fact he was not present in the first car and he has joined the occupants of the first car subsequently. Our attention is also invited to the Medical

Certificate of the Petitioner at page No.57. It discloses that he has not consumed alcohol. It is submitted that recently he has joined Bismillah Airlines Ltd. and there are no criminal antecedent. Learned advocate for the Petitioner also read-over the Sections 349 and 350 which are the material ingredients for an offence under Section 353 of IPC.

3. As against this, learned APP supported invocation of all these sections of IPC and according to him causing obstruction to public servant in discharge of official duties attracts the provision of Section 353 of Indian Penal Code. According to him, the role played by every accused person is not material at this stage and the provisions of Section 34 of Indian Penal Code pertaining to invocation of joint liability has been invoked. He submitted that appreciation of the materials cannot be done in a quashing Petition and he prays for dismissal of the petition.

4. The FIR is lodged by one Anwar Gulab Mohammad Khan who is a Police Sub-Inspector. It is lodged on 2nd February, 2018. He was on night patrolling duty in the intervening night of 1st February, 2018 and 2nd February, 2018 along with other Police staff on western express highway at Ville Parle, Mumbai. There was drunk and drive exercise. At about 1.50 A.M. one Scorpio car bearing No. MH-01-AR-7834 came and driver has not stopped the car in spite of showing the red lantern. The first

informant and other police personal chased him. The driver of the car even gave dash to the barricade. Somehow the police personnel were successful to stop the driver near Andheri bridge. They have noticed that there were two cars. There were 7 persons sitting in that car. Out of them 2 were ladies. The police personnel noticed that the car driver has consumed the alcohol. Two ladies got down from the car and they alighted the another car. At the same time 2 persons from another car came in 1st car. Thereafter, the car was taken to the place of Nakabandi. They have noticed the car number also. They have carried out breath analyzer test. However, initially the person has refused and even he went to the extent of offering bribe and it was rejected. The test was found positive. Even the said person has refused to disclose his name. Somehow he told his name as Aniket Suresh Mistri. Even on inquiry it was revealed that he was not possessing the license.

5. The police noticed that those persons have tried to do shooting with the help of mobile. Even they have refused to sign on receipt issued for payment of the fine amount. Thereafter some altercation took place. Those seven persons even tried to abuse the police personnel.

6. Considering the situation, the first informant called the help from the control room. Even when some additional police staff came and

they tried to convince those persons. Even those additional police staff were manhandled. After inquiry it was revealed that the present Petitioner is one amongst those persons. After that the FIR No. 41 of 2018 came to be lodged under Sections 353, 323, 504, 506, 279 read with 34 of Indian Penal Code and Sections 132, 177, 179, 184, 185 of Motor Vehicle Act read with 112 of Bombay Police Act.

7. It is true that Section 353 of Indian Penal Code is now triable by Court of Sessions. It is also true that for invocation of Section 353 there should be either assault or use of criminal force. As per Section 349 if any person uses force to another person and that another person has changed the motion it is said that force has been used. If such force is used intentionally for committing any offences, then it is said that criminal force has been used under Section 350 of IPC. Whereas as per Section 351 of IPC even if there is gesture which causes another person about fear that is punishable under Section 351 of IPC.

8. When we have read averments in the FIR and the statements of the witnesses, we do find that the ingredients of the assault and criminal force are *prima facie* disclosed. We do find that the police personnel were obstructed in discharge of their duties. The police have every right to inquire with the persons who are moving particularly at

midnight. It is important to note that the car driver has not stopped his car at the first instance when signal was given.

9. This is not the stage to ascertain what is the role of every individual accused person. It is not material at this stage whether the Petitioner was sitting in a different car and he got down after two ladies alighted in that car. It is important to note that after this has happened, there were hurling of abuses on the police and manhandling. This is not the stage to ascertain exactly at what stage the Petitioner has joined the persons in the first car. The above materials are sufficient to invoke Sections applied by the Police. This is not the case wherein the power under Section 482 of IPC to quash the proceedings can be exercised merely because the Petitioner has joined the new company and it cannot be a ground to quash the proceeding if there are sufficient material. Best course for the Petitioner to put forth his case when the trial will be conducted. No case made out for quashing the FIR and accordingly the Petition is dismissed.

10. These are our *prima facie* observations. Trial Court may not influenced by these observations and case be decided on its own merits.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)