

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

REVISION APPLICATION NO.607 OF 2019

Anil M. Bande & Ors.

...Applicants

V/s.

State of Maharashtra

...Respondent

Mr. Sachin S. Thambare for Applicants.

Ms. G. P. Mulekar, APP for Respondent (State).

CORAM : AMIT BORKAR, J.

DATE : NOVEMBER 10, 2022

PC.:

1. The applicants are challenging legality and validity of order dated 3rd October 2019, passed by Additional Sessions Judge, Pune in Sessions Case No.174 of 2019 rejecting application for discharge of accused under Section 227 of Code of Criminal Procedure, 1973. The incident has alleged by the prosecution is of 16th January 2016.

2. The complainant who was working as Junior Engineer in Shirur Municipal Council came in the premises of the council to attend his duty. At that time, the applicants alongwith others did not allowed the officers and staff of council to enter the council premises. It is also alleged that there was abusive language used by the applicants alongwith others against the officers of council, and therefore, first information report came to be lodged against

the applicants and others. After completion of investigation charge-sheet was filed against the accused persons for offences under Sections 353, 341, 504, 506 read with 34 of the Indian Penal Code, 1860.

3. The applicants thereafter filed an application for discharge alleging that the ingredients of Section 353 of Indian Penal Code are not attracted. Learned Sessions Judge after considering the material on record rendered a finding that the statement of witnesses recorded under Section 161 of Code of Criminal Procedure, 1973, *prima facie* disclosed that the public servants intended to go inside the office premises to perform their duty were restrained by the applicants at the entrance of office which *prima facie* constitutes offence under Sections 350 and 351 of Code of Criminal Procedure, 1973 and on the basis of material on record rendered a finding that the material on record is sufficient to proceed against the applicants in the trial.

4. Learned counsel for the applicants submitted that assuming the statement under Section 161 is correct still it would not constitute offence under Section 353 of Indian Penal Code, 1860, as they were not restrained while performing their duties in the office. It is only when they are restrained while performing the duty the essentials of offence under Section 353 of Indian Penal Code, 1860, can be set to be fulfilled.

5. In the context of submissions made on behalf of applicants, I have perused the statement of the complainant. In

the statements under Section 161 of Indian Penal Code, 1860, the complainant has specifically stated that the applicants alongwith others restrained the employees of Municipal Council from entering the building of Municipal Council, with the result they could not perform their official duty. The applicants are named in the statement under Section 161 by giving details of the acts committed by the applicants. On perusal of the statement of witnesses, in my opinion, there is sufficient ground to proceed against the applicants.

6. I do not find any merit in the submissions made on behalf of the applicants that the essentials of offence under Section 353 of Indian Penal Code, 1860, can be fulfilled only when they were restrained while performing their duties. Section 353 of Indian Penal Code, 1860, reads as under;

“353. A careful perusal of Section 353, it is clear that any person whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years.”

7. *Prima facie* the material on record shows that applicants have prevented or deterred the employees of Municipal Council from entering the Municipal Council building which *prima facie* is sufficient to constitute offence under Section 353 of the Indian Penal Code, 1860 and therefore, submission on behalf of the applicants cannot be accepted.

8. The impugned order is not manifestly perverse not resulted in miscarriage of justice. There is no merit, therefore, the Application dismissed.

(AMIT BORKAR, J.)