

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (APL) No. 101 of 2017

Sandipkumar S/o Pusaram Neriya

Aged – 46 yrs, Occ : Service

R/o. Behind Nandane Mangal Karyalaya

Ambika Nagar, Dabki Road, Akola.

... Applicant

- Versus -

State of Maharashtra, through its PSO,

Dabki Road Police Station,

Akola.

... Non-applicant/
Respondent

Mr. Shashibhushan Wahane, Advocate h/f Mr. S. K. Utwal, Advocate for
the applicant

Mr. S. S. Doifode, APP for the State/non-applicant

**CORAM : ROHIT B. DEO AND
URMILA JOSHI-PHALKE JJ.**

DATED : 10-10-2022

ORAL JUDGMENT (Per : Rohit B. Deo, J.)

The applicant is seeking quashment of First Information Report (FIR) dated 6-12-2016 which is registered at Dabki Road Police Station, Akola for offence punishable under Section 143 read with Section 109 of the Indian Penal Code (IPC) and Section 134 of the Maharashtra Police Act.

2. While issuing notice vide order dated 10-2-2017, this Court observed that *prima facie* the FIR is an abuse of the process of law and stayed the investigation.

3. We have heard learned counsel for the applicant, Mr. Shashibhushan Wahane and learned Additional Public Prosecutor, Mr. S. S. Doifode and we see no reason to deviate from the *prima facie* view expressed.

4. It appears from the FIR that Police Constable Santosh Ambilwade found that certain women had assembled at an open space on the occasion of the Mahaparinirwan Day to observe the death anniversary of Dr. Babasaheb Ambedkar. According to Santosh Ambilwade, few women disclosed that they were asked to observe the solemn occasion of the revered leader, by the applicant. The first informant - Santosh Ambilwade then alleges in the report that the women, who were interrogated on the spot, however, disclosed that the intentions of the applicant were not noble.

5. Section 143 of the IPC reads thus :

143. Punishment. - *Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.*

We have no hesitation in holding that, even if every word in the FIR is assumed to be true, no offence punishable under Section 143 of the IPC is made out. Needless to further add, the question of abetment does not arise.

6. We are left with the offence allegedly punishable under Section 134 of the Maharashtra Police Act. The said provision reads thus :

134. Penalty for contravention of rule etc., under section 36

Whoever contravenes, disobeys, opposes or fails to conform to any order given by a Police Officer under section 36 shall, on conviction, be punished with fine which may extend to [five thousand rupees].

7. Learned counsel, Mr. Shashibhushan Wahane has invited our attention to Section 151 of the Maharashtra Police Act which reads thus :

151. Prosecution for certain offences against the Act to be in the discretion of the Police

It will not, except in obedience to a rule or order made by the State Government or by the competent authority, be incumbent on the Police to prosecute for an offence punishable under sections 117, 119, 131, 134, 137, 139, 140 or 144 when such offence has not occasioned serious mischief and has been promptly desisted from on warning given.

8. We note that Section 134 provides maximum sentence of fine of Rs. 5,000/- (Rupee Five Thousand) and the charging Section is 36 which speaks of non-compliance of the directions issued by the Commissioner or Superintendent of Police or other officers to the public. We need not delve deeper. Assuming that the women folk and the applicant did not take permission before assembling at the open space, and such permission is as a fact mandated by any lawful direction, we see no purpose or propriety in compelling the applicant and the other women folk to face trial particularly, since the legislative intent is that if disobedience has not occasioned serious mischief, the prosecution need not be initiated as a matter of course.

9. We allow the application in terms of prayer clause (i) which reads thus :

- (i) Quash and set aside the F.I.R. dated 06/12/2016 (annx-B) registered with respondent vide crime no. 276 for the offence punishable u/s 143 and 109 of Indian Penal Code read with Section 134 of the Maharashtra Police Act.

(Urmila Joshi-Phalke, J.)

(Rohit B. Deo, J.)