

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

CRIMINAL APPLICATION (APL) NO.721 OF 2021

1. Raju Manoharrao Dhande
Aged 47 years, Occupation–Service,
R/o. Plot No.34, Gopal Nagar,
Mount Convent Road, Chandrapur,
Distt. Chandrapur
2. Shailendra Ashok Dhatrak
Aged 37 years, Occupation–Service,
R/o Near Water Tank,
Mahsul Bhawan, Chandrapur,
Distt. Chandrapur
3. Ajay Baburao Mekalwar
Aged 42 years, Occupation-Service,
R/o. Near Water Tank,
Mahsul Bhawan, Chandrapur,
Distt. Chandrapur

...APPLICANTS

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Ballarsha,
Tah. Ballarsha, Distt. Chandrapur
2. Sanjaykumar Achyutrao Davhale
Aged 31 years, Occupation-S.D.O.,
Office at: Sub Divisional Office,
Gondpipri, Distt. Chandrapur

...NON-APPLICANTS

Shri A.A. Dhawas, Advocate for the applicants.
Shri M.K. Pathan, Additional Public Prosecutor for
non-applicant No.1/State.
Shri Anand Deshpande, Advocate for non-applicant No.2.

CORAM : **ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.**
DATE : **OCTOBER 11, 2022.**

JUDGMENT (Per Urmila Joshi-Phalke, J.)

ADMIT. Heard finally with the consent of learned Counsel for the parties.

2. By preferring this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.” for short), the applicants, who have been prosecuted for the offences punishable under Sections 188 and 506 of the Indian Penal Code (hereinafter referred to as “the Code” for short) seeking quashing of the First Information Report vide Crime No.519/2021 registered at Ballarshah police station, District Chandrapur.

3. Brief facts of the case of the applicants are as under:

A] The applicants are permanent resident of Chandrapur and they have no criminal antecedents. The applicant No.1 is Naib Tahsildar presently posted at Chandrapur, applicant No.2 is Awwal Karkun presently posted at Collector Office, Chandrapur and applicant No.3 is also Awwal Karkun presently posted at Sub-Divisional Office, Ballarpur, District Chandrapur. Non-applicant No.2 is Sub-Divisional Officer at

Gondpipri, District Chandrapur. He was also assigned with the charge of Ballarshah Sub-Division, District Chandrapur on 06/05/2021. As per the contention of the applicants, on 06/05/2021 the non-applicant No.2 had lodged the report at Ballarshah police station alleging that the present applicants along with 19 persons entered into the office premises of non-applicant No.2 – Sub-Divisional Office and threatened him that they will falsely implicate him under the provisions of Atrocities Act and disobeyed the order of public servant which was promulgated by the Collector, Chandrapur.

B] It is the contention of the applicants that the alleged incident took place while applicants were discharging official duty. As per the allegations in the First Information Report, due to spread of Covid-19, the Collector has promulgated the order and restrained five or more persons to come together and form the unlawful assembly. Section 144 of the Cr.P.C. was made applicable within the city. It is alleged that the applicants along with 19 persons entered into the office premises of non-applicant No.2 and thus they disobeyed the order promulgated by the Collector. On the basis of said report, the crime was registered vide Crime No.519/2021 under Section 188 and 506 of the Code.

C] It is the contention of the applicants that there is no material to invoke the provisions of Section 188 and 506 of the Code. Moreover,

in view of Section 195(1) of the Cr.P.C. no Court shall take cognizance in respect of the offence punishable under Sections 172 to 188 of the Code or any attempt to any such offences except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. As such taking cognizance of the offence punishable under Section 188 by the Court is expressly barred and only the complaint is to be filed. Moreover, Section 506 of the Code is non-cognizable hence the cognizance of aforesaid Indian Penal Code offences cannot be taken and therefore, the First Information Report is liable to be quashed and set aside.

4. In response to the notice, non-applicant No.1/State has opposed the application on the ground that the Investigating Agency has collected the CCTV footage of the chamber of the informant wherein the incident had occurred. The applicants have threatened the complainant that they will implicate him in the offences under the provisions of Scheduled Castes and Scheduled Tribes community. The investigation is in progress. The application is devoid of merits and needs to be rejected in the interest of justice.

5. Heard Shri Dhawas, learned Counsel for the applicants. He submitted that in view of Section 195(1) of the Cr.P.C. no Court shall take cognizance in respect of the offence punishable under Sections 172

to 188 of the Code and only complaint is maintainable. Regarding Section 506 of the Code he submitted that Section 506 of the Code is non-cognizable and hence cognizance taken in respect of the above said offences, is liable to be quashed and set aside.

6. On the other hand, Shri M.K. Pathan, learned Additional Public Prosecutor submitted that there is *prima facie* material to show that the present applicants entered in the office premises of non-applicant No.2 and the offence is made out.

7. Shri Anand Deshpande, learned Counsel for non-applicant No.2 supported the said contention.

8. Shri Dhawas, learned Counsel for the applicants in support of his contention relied upon the decisions of this Court in the case of ***HLA Shwe and ors. Vs. State of Maharashtra, thr. Police Station Tahsil, Nagpur 2020 SCC OnLine Bom. 959*** wherein it is held that Section 188 of the Penal Code, 1860 deals with disobedience to order duly promulgated by public servant. In view of Section 195 of the Cr.P.C. lays down that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Code, except on the complaint in writing to the public servant concerned or of some other public servant to whom he is administratively subordinate. He further

relied upon *Shrinath Gangadhar Giram Vs. State of Maharashtra thr. Police Inspector and anr. 2017 SCC OnLine Bom 10118* wherein it is held that in view of specific bar contained under Section 195(1) of the Cr.P.C., the impugned First Information Report is nothing but an abuse of process of law. After giving due consideration to the submissions made by both the parties we have also considered the relevant provisions. The offences mentioned in Section 188 of the Code which is the disobedience of regulation or order made under the said Act. Section 188 of the Code is reproduced below :

“188. Disobedience to order duly promulgated by public servant :

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—*It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.*

9. Thus, the ingredients of the offence under Section 188 of the Indian Penal Code are as follows:

- (i) There was promulgation of an order by a public servant lawfully empowered to promulgate such order;
- (ii) Such order restrained the citizens to abstain from a certain act or to take certain order with certain property in his possession or under his management;
- (iii) The accused was aware of such order;
- (iv) He disobeyed such order;
- (v) Such disobedience caused or tended to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person lawfully employed or such disobedience caused or tended to cause danger to human life, health or safety, or caused or tended to cause a riot or affray.

10. It is submitted that the cognizance of offence punishable under Section 188 is expressly barred under Section 195(1) of the Cr.P.C. The provisions of Section 195 of the Cr.P.C. are as follows:

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub-clause (ii),

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a Tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such

former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate:

Provided that -

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

11. In view of the legal provisions contemplated under Section 195 of the Cr.P.C. it can be said that no court shall take cognizance of any offences punishable under Sections 172 to 188 of the Code, except on the complaint in writing of the public servant concerned or some other public servant, to whom he is administratively subordinate. After reading of the provisions of Section 188 of the Code and Section 195 of the Cr.P.C. it is evident that if the alleged offence is punishable under Sections 172 to 188 of the Code, the Court cannot take cognizance except on a complaint in writing of a public servant concerned or some other public servant to whom he is administratively subordinate. In such circumstances, no First Information Report could have been registered by the police for an offences punishable under Section 188 of the Code. The legislative intention is clear from the wordings used in Section 195(1) of the Cr.P.C. which show that where an offence is committed under Section 188 of the Code, it would be

obligatory from the public servant before whom such offences committed to file a complaint before the concerned Magistrate having jurisdiction to take cognizance of it. Thus, the First Information Report given by the non-applicant No.2 in the police station cannot be termed as a complaint given to the Magistrate in writing.

12. Shri Dhawas, learned Counsel for the applicants rightly relied upon the judgment of the Hon'ble Apex Court in the cases of HLA Shwe and ors. (supra) and Shrinath Gangadhar Giram (supra). The Hon'ble Apex Court in the case of ***C. Muniappan Vs. State of Tamil Nadu (2010) 9 SCC 567*** held that the law can be summarized to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provision of Section 195 of the Cr.P.C. is mandatory. Non-compliance of it would vitiate the prosecution and all other consequential order. The Court cannot assume the cognizance of the case without such a complaint. In the absence of such a complaint, the trial and conviction will be *void ab initio* being without jurisdiction.

13. The offence is also registered under Section 506 of the Code which is non-cognizable offence.

14. Having considered the ambit and scope of Section 195(1) of the Cr.P.C. and the ratio laid down by the Hon'ble Apex Court we are of the

opinion that the Investigating authorities acted without jurisdiction in registering the First Information Report under Section 188 of the Penal Code based on a report to the police. The investigation conducted by the police was without jurisdiction. The offence punishable under Section 506 of the Code is non-cognizable.

15. Having regard to the facts involved in the present case and the ratio laid down by the Hon'ble Apex Court in respect of the exercise of powers under Section 482 of the Cr.P.C. in the case of ***Jagmohan Singh Vs. Vimlesh Kumar and ors. 2022 LiveLaw (SC) 546*** wherein it is held that while exercising jurisdiction under Section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not. The jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of Section 482 of the Cr.P.C. itself. It is further held that the criminal proceedings can be said to be in abuse of the process of Court, to warrant intervention under Section 482 Cr.P.C., when the allegations in the FIR do not at all disclose any offence or there are materials on record from which the Court can reasonably arrive at a finding that the proceedings are in abuse of the process of the Court.

16. In view of above well settled position, we are of the considered view that the implication of the applicants herein for the offences

punishable under Sections 188 and 506 of the Code would be an abuse of process of law. Compelling the applicants to undergo the trial would cause grave injustice, therefore, the application deserves to be allowed.

17. In the result we proceed to pass the following order:

(a) The criminal application is allowed.

(b) The First Information Report vide Crime No.519/2021 registered against the applicants at Ballarshah Police Station, District Chandrapur for the offences punishable under Sections 188 and 506 of the Indian Penal Code is quashed and set aside.

(c) Consequential all the proceedings arising therefrom also stands disposed of.

18. Rule is made absolute in the aforesaid terms.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

**Diva*