

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

CRIMINAL APPLICATION (APL) NO.451 OF 2020

APPLICANT :

(Accused No.10)

1. Sandip Namdeo Kakde,
A/a 50 years, Occu : Business,
R/o Ward No.1, Ghuggus road,
Nagala, Tah. & Distt. Chandrapur.
Police Station : Ghuggus.

V E R S U S

RESPONDENTS :

(Informant)

1. State of Maharashtra
Through Police Station Officer
Police Station : Ghuggus,
Tah. Ghuggus, Distt. Chandrapur.
2. Bhimrao Namdeo Padole
a/a 50 Occu : Police Head Constable
Police Station Ghuggus Tah Chandrapur
Dist Chandrapur.

Shri A. A. Dhawas, Advocate for applicant.
Shri S. S. Doifode, APP for non-applicant No.1.

**CORAM:- MANISH PITALE AND
VALMIKI SA MENEZES, JJ.**
DATED :- 29/07/2022.

ORAL JUDGMENT : (PER MANISH PITALE, J.) :

1. Heard Shri A. A. Dhawas, learned counsel for the applicant and Shri S. S. Doifode, learned APP for Non-applicant No.1-State.
2. By this application, applicant is seeking quashing of FIR dated 08/03/2015 and the charge sheet dated 13/06/2015, as

also Summary Criminal Case No.1106/2015 pending against the applicant. This pertains to the offences punishable under Sections 143 and 341 of the Indian Penal Code (IPC) read with Section 135 of the Maharashtra Police Act, 1951.

3. The principal contention raised on behalf of the applicant is that the oral report lodged by the police personnel dated 07/03/2015, led to the registration of FIR named as many as 12 persons, but the name of applicant was not stated therein. The alleged incident concerned blocking of traffic and movement of persons being restrained, as a consequence of the accused persons allegedly forming an unlawful assembly, in the backdrop of an accident in which a person riding on a bicycle was killed. It was stated in the oral report that the persons named therein had gathered and indulged in the said activity when the truck had mowed down the cyclist. The driver and owner of the truck were restrained and the road was blocked.

4. It is submitted on behalf of the applicant that if the charge sheet and the accompanying statements are perused, except one statement given by one Mr.Bhimrao Padole, Police Constable, none of the other alleged witnesses have named the

applicant. Even in the statement of the aforesaid Police Constable, apart from naming the applicant as one of the persons, who were allegedly present at the spot of the incident, no specific role was assigned to the applicant.

5. It is further submitted that for invoking Section 135 of the aforesaid Act of 1951, there ought to be promulgation of an order under Section 37 of the said Act. The charge sheet does not disclose any such order and the promulgation thereof. It is further submitted that neither the complainant nor the alleged witnesses have stated that the applicant in any manner wrongfully restrained them as per definition of 'wrongful restraint' under Section 339 of the IPC. On that basis, it is submitted that the present application deserves to be allowed.

6. Shri S. S. Doifode, learned APP appearing for Non-application No.1 submitted that the contentions raised on behalf of the applicant, were a matter of trial. Therefore, this application may not be entertained.

7. Record shows that non-applicant No.2 was served but, he has not appeared through counsel before this Court. In any case, he is a Police Constable working in Police Station, Ghuggus.

8. Learned counsel for the applicant has submitted that no role is particularly attributed to him in FIR and he is not even named therein. A perusal of the FIR, charge sheet and the statements on record show that the applicant does not feature in the oral report dated 07/03/2015, leading to registration of FIR, his name finds mentioned only in one of the statements, which is given by the Police Constable Bhimrao Padole, who only named the applicant without assigning any overt act or specific role. None of the other statements referred to above, name the applicant.

9. Apart from this, although there is reference to order issued by the competent authority under Section 37(1)(3) of the Act of 1951, the said document is not found attached with the charge sheet. Even otherwise, promulgation of such an order, as contemplated under Section 37 of the Act of 1951, would be necessary to invoke the provisions of the aforesaid Act.

10. Insofar as the wrongful restraint is concerned, Section 339 of the IPC defines it by stating that whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to

proceed, is said to wrongfully restrain that person. Section 341 of IPC provides for punishment for wrongful restraint.

11. The ingredient of the offence is that the accused should have voluntarily obstructed another person from proceeding in any direction in which that person has a right to proceed. Statements on record only indicate that there was a group of persons present at the spot of incident, who had allegedly blocked traffic. As noted above, in none of the statements, except one, the name of the applicant is featured.

12. None of the statements indicate that the person who intended to proceed in a particular direction was indeed restrained by the applicant from doing so. Therefore, ingredients of Section 339 of the IPC are not found, even if the material on record is to be 'accepted, as it is.

13. In view of above, we are convinced that no purpose would be served, if the matter is allowed to proceed further insofar as the applicant is concerned. Accordingly, application is allowed in terms of prayer clause (A), which reads as follows :-

"A) To call for the entire record of Sum. Cri. Case No.1106/2015 pending on the file of the learned Judicial Magistrate First Class Chandrapur arising out of Crime No.50/2015 Police Station, Ghuggus, Distt. Chandrapur for offences u/ss 143 & 341 of the I.P.C., and 135 of Maharashtra Police Act, and set aside the F.I.R. dt. 08/03/2015 and Chargesheet dated 13/06/2015 (Annexure-1)."

14. It is made clear that the said relief is restricted only to the applicant before this Court.

15. The application stands disposed of.

[VALMIKI SA MENEZES, J.]

[MANISH PITALE, J.]

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