

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

CRIMINAL APPLICATION (APL) NO. 931 OF 2022

Jitendra s/o Subhashrao Kathalkar, Aged
about 39 years, occ. Private Job, R/o
Gadge Nagar, Amravati, Tq. and District
Amravati.

... **APPLICANT**

VERSUS

State of Maharashtra,
Through P.S.O. Rajapeth, Police
Station Rajapeth, Amravati, Tq.
and Distt. Amravati.

... **NON-APPLICANT**

Shri J.Y. Ghurde, Advocate a/w Shri V.B. Bhise, Advocate for
the applicant.
Shri Ukey, A.P.P. for the non-applicant/State.

CORAM : **VINAY JOSHI, J.**
DATED. : **22.07.2022.**

ORAL JUDGMENT :

ADMIT. Considering the controversy involved in the

application, the criminal application is taken up for final disposal by consent of both the parties.

2. The applicant who is arraigned as an accused in Summary Criminal Case no.2492 of 2020 has challenged the order dated 09.06.2022 passed by the Magistrate to the extent of refusal of discharge for the offence punishable under Section 269 of the Indian Penal Code and the order passed by the Revisional Court dated 08.07.2022 by which the Magistrate's order was maintained. On 12.07.2020, the Police of Amravati City Police Station found the accused roaming on the public street in violation of the prohibitory order proclaimed by the District Collector and therefore the crime. The Collector, Amravati has issued a prohibitory order dated 06.07.2020 precluding the public at-large from moving on the road during specified hours to meet the global pandemic challenge.

3. It was found that on 12.06.2020 at around 11.40 am, the applicant was moving on his motorcycle on the public road in breach of order hence, he was apprehended. The Police have

registered crime for the offence punishable under Sections 188 and 269 of the Indian Penal Code and Section 51(b) of the Disaster Management Act, 2005.

4. The applicant has applied to the Magistrate for discharge on which learned Judicial Magistrate has discharged the applicant from the offence punishable under Section 188 of the Indian Penal Code and Section 51(b) of the Disaster Management Act, 2005, however declined to discharge for the offence punishable under Section 269 of the Indian Penal Code. The learned Sessions Judge has upheld the said order.

5. Learned Counsel appearing for the applicant does not dispute issuance of notification issued by the Collector, Amravati as well as the applicant was found on the public road during the prohibited hours. However, the applicant comes with a specific defence that he was an employee of a pharmaceutical company namely Alkem Laboratories Limited and was considered to be a front line worker. It is common knowledge that in the pandemic period supply of necessary medicines was the only worldwide

priority. The applicant has produced his Identity Card showing his employment with the Alkem Company, particularly, he has produced a certificate issued by the Company specifying that the applicant was engaged in essential services as a front line worker. It is also stated that as a part of duty he was indulging into supplying health care facility including to supply medicines to the patients, doctors, chemists, etc. The certificate was issued by the Company on 01.07.2020 having validity till 30.09.2020. On that basis, it is submitted that in disregard to the fact that the applicant falls in exempted category, he has been roped for the offence punishable under Section 269 of the Indian Penal Code. My attention has been attracted to the Collector's Circular dated 06.07.2020 bearing special reference regarding exemption granted to certain category of people engaged in medicines and health services.

6. The learned Counsel for the applicant would submit that unless there is specific material to show that the applicant's act was likely to spread infection of COVID-19, he cannot be charged for the offence punishable under Section 269 of the

Indian Penal Code. In this regard, he relied on the decision of this Court in Criminal Application (APL) No.453 of 2020 (HLA Shwe and ors. vs. State of Maharashtra). My attention is also invited to the decision of Karnataka High Court in Criminal Petition No. 5185 of 2021 (Mr. Vishwesh Madane vs. The State) wherein the Karnataka High Court by following the Division Bench's decision of this Court has quashed the proceeding by holding that the offence punishable under Section 269 of the Indian Penal Code may not attract.

7. Perusal of impugned order discloses that though such documents are placed on record, on technical ground, the defence was not considered. The observations in that regard cannot be said to be totally against the law, but if palpably the documents are sufficient to show on the face of it, there is no bar to consider the same while exercising the powers under Section 482 of the Code of Criminal Procedure. *Prima facie*, it is established that the applicant falls in exempted category, therefore, the exercise of applicant undergoing the trial is unwarranted and would be fruitless process. This Court is invested with wide powers to

prevent the abuse of the process of Court and to secure the ends of justice.

8. Having regard to the above facts, there is no purpose in continuing the prosecution and thus, the application deserves to be allowed. In view of that impugned order dated 09.06.2022 passed by the Magistrate regarding rejection of discharge for the offence punishable under Section 269 of the Indian Penal Code and consequential order dated 08.07.2022 passed by the Revisional Court are set aside. The applicant is discharged from the offence punishable under Section 269 of the Indian Penal Code.

9. The application stands disposed of in the above terms.

(VINAY JOSHI, J.)

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