

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

CRIMINAL APPLICATION (APL) NO. 1248 OF 2019

APPLICANTS:

1. Smt. Shila Deorao Bhagat,
Aged : 47 years, Occu. : (Widow)
House Wife R/o :- Lohara Waghpur
Road, Near Ideal Computers,
Prajapati Nagar, Lohara,
Yavatmal 445002.
2. Shri. Suraj Deorao Bhagat,
Aged : 23 years, Occu. :- Student
R/o :- Lohara Waghpur Road,
Near Ideal Computers, Prajapati
Nagar, Lohara, Yavatmal 445002.

VERSUS

NON-APPLICANTS :

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Sadar, Nagpur.
2. Mrs. Bhagyashree Bhimraoji Banayat,
Aged about 40 years, Occu : Director-
Reshim Sanchanalay, 6th Floor,
Administrative building No.2,
Divisional Commissioner Office
Premises, Civil Lines, Nagpur.

Shri Saurabh Bhende, Advocate for applicants.

Shri S.M.Ghodeswar, Addl.Public Prosecutor for Non-applicant No.1.

**CORAM:- MANISH PITALE AND
VALMIKI SA MENEZES, JJ.**

DATED :- 23/08/2022.

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

1. Heard.

2. **ADMIT.** Heard finally with the consent of learned counsel appearing for the parties.

3. By this application, the applicants have approached this Court seeking quashing of FIR No.410/2019 dated 09/09/2019 registered with Police Station, Sadar, Nagpur for offences punishable under Sections 353 and 189 read with Section 34 of the Indian Penal Code (IPC).

4. Shri Saurabh Bhende, learned counsel appearing for applicants invited our attention to the oral report leading to the registration of FIR and submitted that even if the contents of the report were to be taken as it is, the ingredients of the said offence, are not made out. He emphasized upon the backdrop in which the said incident took place. It is pointed out that the applicant had reached the office of non-applicant No.2 (informant) in order to demand the benefits of Assured Promotion Scheme which, according to the applicant No.1, were rightfully due to her deceased husband. The applicant No.2, being her son, had accompanied her to the office of non-applicant No.2.

5. It is submitted that when the applicants gathered information that the said benefits were being wrongly denied,

they had approached the office of non-applicant No.2 to vent their grievance. It was submitted that the allegations made in the oral report do not make out the ingredients of offences punishable under Sections 353 and 189 of the Indian Penal Code.

6. On 28/11/2019, this Court issued notice in the present application and granted interim order to the effect that the charge sheet shall not be filed against the applicants without leave of this Court.

7. The non-applicant No.1 - State is represented by Shri S.M.Ghodeswar, learned APP and the non-applicant No.2 has chosen not to appear before this Court, despite service.

8. Shri S. M. Ghodeswar, learned APP for the State submitted that the statement made in the oral report warranted investigation for the said offence and that this Court may not interfere with the same.

9. We have carefully perused the contents of oral report, which led to the registration of FIR. We find that the allegations are principally made against the applicant No.1, who is widow of the deceased employee of the office, wherein the non-applicant

No.2 was serving as a Director. The applicant No.1 seems to have expressed her dissatisfaction at the denial of rightful claim under the scheme. It is in this backdrop that she appears to have rushed to the cabin of non-applicant No.2. It is evident from the report itself that the applicant No.2 did not enter the cabin of non-applicant No.2.

10. Despite the acts attributed to applicant No.1 in the presence of non-applicant No.2, we find that the said action attributed to her would still fall short of the ingredients necessary for invoking Sections 353 and 189 of the Indian Penal Code, as the said Section pertains to the assault on public servant during discharge of his duties.

11. We are of the opinion that to invoke the aforesaid provisions, there has to be an assault or use of criminal force on the public servant.

12. In this case, even if the contents of the oral report are to be taken as it is, it cannot be said that there is even an allegation that the applicants, particularly applicant No.1 assaulted or used criminal force against non-applicant No.2 to deter her from performing her duty.

13. Shri S. M. Ghodeswar, learned APP submitted that the contents of oral report were enough to demonstrate threat or use of force and accordingly, offence under Section 189 of the Indian Penal Code is registered against the applicants. Even in the said submission of learned APP is accepted, we find that the offence under Section 189 of the IPC is a non-cognizable offence and therefore, FIR could not have been registered in that context.

14. In view of the above, we are of the opinion that present application deserves to be allowed. Accordingly, application is allowed in terms of Prayer Clause (i), which reads as follows :-

"(i) quash and set aside the First Information report instituted by the non-applicant no.1 on 09.09.2019 bearing No.410/2019 on the basis of the complaint made at the behest of the non-applicant no.2 against the applicants for the offences punishable under Section 353 and 189 read with section 34 of the Indian Penal Code, 1860."

[VALMIKI SA MENEZES, J.]

[MANISH PITALE, J.]

Choulwar