

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

992 CRIMINAL APPLICATION NO.1681 OF 2020

- 1) Vishal S/o. Ramesh Nagthane.
- 2) Pankaj S/o. Dattatray Nagare.

... Applicants

Versus

- 1) The State of Maharashtra.
- 2) Anant S/o. Dattatraya Shahane.

... Respondents

...
Mr. Manish P. Tripathi, Advocate for Applicants.
Mr. P. N. Kutti, APP for Respondent/State.

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CORAM : R. G. AVACHAT and
SANJAY A. DESHMUKH, JJ.

DATE : 17th October, 2023.

Per Court:

. Heard.

2 This application has been filed for quashment of FIR and consequential charge-sheet in R.C.C. No.75 of 2020, pending in the Court of learned Judicial Magistrate First Class, Sailu, District Parbhani, for the offences punishable under Sections 353, 188, 269 and 270 read with 34 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

3 The FIR has been lodged by *Awwal Karkun* (in-charge

Naib Tahsildar) of the office of Sub Divisional Officer, Sailu on 18th April, 2020. In short, the case of the informant is that on the given date i.e. on 18th April, 2020, he alongwith Sub Divisional Officer and other revenue officials were moving in the town Sailu, so as to maintain law and order and particularly ensure that directions issued in regard to avoid spread of *Corona Virus* are observed and complied with. It was about 01:45 pm, they saw three persons riding on the motorbike. The motorcycle riders were asked to stop, but they did not. After moving somewhat ahead, one of them alighted. The other two went ahead and disappear in Parijat colony. So as to identify who were those three persons, all of the revenue officials went to Parijat colony. Since they had seen the two persons to have entered one of the houses in that colony, they went to that house. Co-accused Rajesh Jija Rathod and Manjutai Jija Rathod came out of the house. These two co-accused are alleged to have misbehaved with the revenue officials.

4 The informant gave a supplementary statement on 27th April, 2020 i.e. about 9 days after the FIR was registered. It has been stated therein that those two persons, who were on the motorbike and later on disappeared, were none other than the present applicants.

5 Still we do not find anything incriminating to have been committed by the present applicants. The crime allegedly committed

by them, is non-observance of the Government circular issued under the Disaster Management Act, 2005, which is an offence punishable under Section 188 of the Indian Penal Code. In the present case, cognizance of the offence has been taken on police report and not the complaint lodged by concerned public servant or his subordinate duly instructed in that regard. Since for the offence punishable under Section 188 of the I.P.C. cognizance is required to be taken based on the complaint of such officer and there being no compliance of this mandatory provision under Section 195(1)(a) of the Code of Criminal Procedure, we are inclined to allow this application, although the learned APP has strong reservation.

6 The application is, therefore, allowed in terms of prayer clauses (B) and (B-1).

[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]

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