

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.157 OF 2022**

Anil Manohar Vasudev	]	Applicant
Vs.		
1. The State of Maharashtra	]	
2. Ranjeet Ramchandra Patil	]	
3. Aaba Tukaram Bandgar	]	
4. The Superintendent of Police	]	
Kasba Bawada, Main Road,	]	
Ramanlala, Kolhapur.	]	Respondents

.....

Ms. Meghna Gowalani, for Applicant.

Ms. P.P. Shinde, A.P.P, for Respondents-State.

.....

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**

DATE : 3rd January, 2023.

ORDER: [Per Revati Mohite Dere, J.]:

1. Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith, with the consent of the parties and the application is taken up for final disposal. Learned A.P.P waives notice on behalf of all the respondents.

3. By this application, preferred under section 482 of the Code of Criminal Procedure, 1973 (for short “Cr. P.C”), the applicant seeks quashing and setting aside of the First Information Report (for short “F.I.R”) registered vide C.R. No.0384 of 2021 with the Ichalkaranji Police Station, Kolhapur for the alleged offences punishable under Section 109 of the Indian Penal Code (for short 'I.P.C') and Section 4 r/w Section 25 of the Arms Act, 1959 and consequently, the proceeding pending before the learned J.M.F.C at Ichalkarnaji, Kolhapur being Chargesheet No.04 of 2022.

4. Learned Counsel for the applicant submits that the applicant is a Director of a Company viz. Yashraj Auto Products Private Limited, incorporated in 2014 under the Companies Act, 2013. She submits that the applicant is a social worker and his Company has received several certificates for Quality Management System of the company and as such, has credentials in the society. She submits that the applicant has been arraigned as an accused in the aforesaid C.R only because he clicked his photo holding a sword and posted it on the Facebook. She submits that admittedly there was no Notification issued under the Maharashtra Police Act, in force, at the relevant time and as

such, the applicant could not have been prosecuted for the offences under the Arms Act. She further submits that even Section 109 of the I.P.C would not apply in the facts of the present case. According to learned Counsel for the applicant, applicant's case is squarely covered by the parameters laid down by the Apex Court in the case of **State of Haryana and others Vs. Bhajanlal and others**¹. Learned Counsel for the applicant also relied on an order passed by the Division Bench of this Court, at Aurangabad in the case of **Dilip s/o Asaram Zagade Vs. The State of Maharashtra and others**².

5. Learned A.P.P on the last date was directed to produce the Notification, pursuant to which, the applicant was prosecuted under the Arms Act. Learned A.P.P has today tendered a photo copy of the said Notification dated 5th October, 2017 issued by the Superintendent of Police, Kolhapur. The said Notification is taken on record. Learned A.P.P does not dispute the fact, that the Notification dated 5th October, 2017 came into operation on 6th October, 2017 and was in operation till 16th October, 2017. She

1 1992 Supp (1) SCC 335

2 Criminal Application No.3111 of 2018 and Criminal Application No.3385 of 2018 decided on 18th February, 2019.

also does not dispute the fact, that the incident had taken place on 30th September, 2017 and as such, the Notification was not in force at the relevant time.

6. Learned A.P.P fairly states that even section 109 of the I.P.C will also not apply in the facts of the present case as there is no abetment as contemplated under the said provision.

7. Perused the papers. It appears that the applicant had clicked a photo with a sword and posted it on Facebook on 30th September, 2017. Pursuant thereto, Police Officer Mr. Kiran Bhosale informed Mr. Ranjit Patil – Police Naik attached to Crime Branch Kolhapur, who lodged an F.I.R i.e Cr. No.0384 of 2021 with the Ichalkaranji Police Station, Kolhapur alleging the aforesaid offences, on 2nd October, 2021. On registration of the F.I.R, the applicant was arrested on 2nd October, 2021 and was released on bail on the very next day i.e on 3rd October, 2021. After investigation, charge-sheet was filed as against the applicant and the case is presently pending before the learned J.M.F.C, Ichalkaranji, Kolhapur.

8. The short question that arises for consideration in the application is, whether the Sections alleged against the applicant are made out against him, taking the prosecution case as it stands. Admittedly, Sections 4 and 25 of the Arms Act will not apply to the facts of the present case, inasmuch as, the Notification dated 5th October, 2017 issued by the Superintendent of Police, Kolhapur came into operation on 6th October, 2017 and was in force till 16th October, 2017. As noted earlier, the incident in question had taken place on 30th September, 2017. Hence, clearly the provisions of Section 4 r/w Section 25 of the Arms Act will have no application to the facts of the present case. As far as Section 109 of the I.P.C is concerned, the same is reproduced herein below. The said section reads thus;

"109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment._

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express

provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence".

9. A perusal of the said Section shows that an offence has to be committed for a person to be punished for abetting the said offence. According to the prosecution, the applicant by brandishing the sword in the photo which was put on the Facebook was instigating others to commit an offence. Admittedly, no offence was committed and as such, by no stretch of imagination, it can be said that the applicant has committed an offence under Section 109 of the I.P.C. Learned A.P.P has also fairly conceded to the said position. The applicant's case is squarely covered by the parameters laid down by the Apex Court in the case of **State of Haryana and others** (supra). Relevant clauses i.e clauses No.1 and 3 of paragraph 102 read thus;

"102....

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their

entirety do not prima facie constitute any offence or make out a case against the accused;

(2)

(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused".*

10. Considering the facts as stated aforesaid, taking the prosecution case as it stands, no offence either under Section 109 of the I.P.C or under Sections 4 and 25 of the Arms Act is disclosed against the applicant. Resultantly, no useful purpose would be served by continuing the proceeding against the applicant. Infact, continuation of the proceedings would be nothing but an abuse of the process of law.

11. Considering the aforesaid, the application is allowed and the F.I.R, bearing C.R. No.0384 of 2021 registered with the Ichalkaranji Police Station, Kolhapur, as against the applicant

and consequently, the proceeding pending before the learned J.M.F.C, at Ichalkaranji, Kolhapur, being C.C No.50 of 2022, are quashed and set aside.

12. Rule is made absolute. Application is disposed of.

13. All parties to act on the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.] [REVATI MOHITE DERE, J.]