



Harish

APL 617 of 2016.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 617 OF 2016

1. The Chief Officer, Pandharpur
Municipal Council, having office at
Navi Peth, Pandharpur, 413304
District- Solapur

...Applicant

V/s.

1. The State of Maharashtra
(Through Senior Police Inspector)
Pandharpur City Police Station,
Pandharpur.

2. Vikram Waman Kolekar
Residing at Kolekar Vasti, Gursale,
Tal- Pandharpur, Dist- Solapur.

...Respondents

Mr. Sarang S. Aradhye for the Applicant.
Ms. M. H. Mhatre, APP for the Respondent-State.

**CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.**

**RESERVED ON : 7th OCTOBER, 2023.
PRONOUNCED ON : 2nd NOVEMBER, 2023.**

JUDGMENT : (PER SHARMILA U. DESHMUKH, J.)

1. By this Application filed under Section 482 of Cr.PC., the Applicant seeks quashing of CR. No. 0332 of 2017 registered with Pandharpur City Police Station, for the offence punishable under Section 295 of the Indian Penal Code.

2. Heard Mr. Sarang S. Aradhya, learned Advocate for the Applicant and learned APP for the Respondent-State. Despite service, none appears for Respondent No.2.

3. Mr. Aradhya, learned Advocate for the Applicant submits that, at the relevant time, the Applicant was the Chief officer of Pandharpur Municipal Council and was discharging his official duty by implementing the orders passed by this Court in Public Interest Litigation No. 155 of 2011. He would submit that, the allegation in the FIR is that, the illegal hoardings which were erected in Pandharpur city were removed by the Applicant. That, the act attributed to the Applicant was undertaken while implementing the order of this Court in Public Interest Litigation No. 155 of 2011 which dealt with the issue of erection of illegal hoardings. He submitted that, the hoardings of Rajmata Ahilyadevi Holkar were erected by the Respondent No.2 and his supporters without obtaining permission of Pandharpur Municipal Council. He submits that, taking the FIR as it is, the ingredients of Section 295 are not made out.

4. We have considered the submissions and perused the record.

5. The Applicant is the Chief Officer of a Municipal Council and is entrusted with statutory duties. The allegation in the FIR is that, on

28th May, 2016, the Respondent No.2 and his supporters had erected digital boards to celebrate the birth anniversary of Rajmata Ahilyadevi Holkar. It is alleged that, under the directions of the Applicant, the employees of the Municipal Council had removed the digital boards and as such, the religious sentiments of the Dhangar community have been hurt.

6. It needs to be noted that, pursuant to the various orders passed by this Court in Public Interest Litigation No. 155 of 2011, the Applicant in his capacity as Chief Officer was discharging his official duties of removal of illegal/unauthorized hoarding. The FIR does not indicate/disclose that, any permission was obtained from the Municipal Council for erection of the digital boards. Against the backdrop of the allegation in the FIR, if we peruse Section 295 of IPC, the said offence is attracted when any person destroys or damages or defiles any place of worship or any object held sacred by any class of persons with the intention of insulting the religion of any class of person or with the knowledge thereto.

7. In the present case, the act attributed is the removal of the digital boards which by any stretch of imagination cannot be construed as a place of worship or object held sacred by the concerned community.

We find complete absence of mens rea as the Applicant was discharging his official duty and was implementing Orders passed by this Court.

8. Considering the above act attributed to the Applicant, we do not find that the allegations attract the ingredients of Section 295 of IPC. In our opinion, the continuation of the proceeding would amount to sheer abuse of process of law. Resultantly, Application is allowed in terms of prayer clause (b), which reads thus:

(b) That by appropriate orders of this Hon'ble Court, First Information Report (F.I.R.) being F.I.R. No. 0332 filed/lodged against the Applicant at the instance of Respondent No. 2 by the Respondent No. 1 at Pandharpur city Police Station dated 28.05.2016 under section 295 of Indian Penal Code, be quashed and set aside.

9. Rule is made absolute in the above terms.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)