

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 119 OF 2022.

Aditya Jaydev Joshi

...Applicant.

Versus

The State of Maharashtra & Anothers.

..Respondents.

Mr. Abhijit Desai i/b Surbhi Agrawal and Vishal Dharade for the Applicant.

Ms. M.H. Mhatre APP for the Respondent-State.

Coram : Nitin W. Sambre &
Sharmila U. Deshmukh, Jj.

Date : June 14, 2023.

P. C. :

1. The petitioner is seeking to quash the charge-sheet in Crime / FIR No. 643 of 2018 registered with Malvani Police Station, Mumbai on the allegation of commission of offences punishable under section 353 of the Indian Penal Code, 1860.

2. The case of prosecution is that the petitioner resisted the instructions issued by the complainant – a public servant (a police constable in the present case) on the intervening night of 14th and 15th September 2018 and has used threatening language when the applicant was trying to enter into the sea.

3. The submissions of Mr. Desai, learned counsel for the petitioner is that the petitioner being the student of mass

communication, was on a project of collecting photographs and information on Ganpati Immersion. According to Mr. Desai, the petitioner had no intention of committing the offence in question. He would urge that from the language employed in the FIR, necessary ingredients of offence punishable under section 353 of IPC cannot be inferred.

4. Learned APP while inviting our attention to the very conduct of petitioner which is narrated in the FIR, submits that the act of the petitioner can be considered as one satisfying the ingredients of offence punishable under section 353 of IPC.

5. We have appreciated the submissions.

6. It appears that the petitioner in the intervening night of 14th and 15th September 2018 was on the beach and was trying to capture the images of Ganpati immersion. It appears that the petitioner tried to enter into deep water while continuing with the video shooting. Instructions issued by the police authorities not to enter into the deep water were resisted by continuing with the shooting by the applicant.

7. From the allegation in the FIR, we do not see that the petitioner has assaulted or used criminal force against the public servant, i.e., the complainant so as to deter him from his official duty.

What can be noticed is that the petitioner has not followed the instructions given by the said police officer. As such, we are of the opinion that the ingredients of offence punishable under section 353 of the IPC, alleged against the petitioner, cannot be inferred from the contents of FIR and other material. That being so, the case for indulgence is made out. Accordingly, the petition is allowed in terms of prayer clause (a).

[Sharmila U. Deshmukh, J.]

[Nitin W. Sambre, J.]