

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.519 OF 2015**

Nityanand Ramjatan Sharma
Age 29 years, occ. Journalist,
having office at C/o. Jia News,
106-107, B Wing, New Udyog Mandir No.2,
Kamanwala Chambers, Mogal Lane,
Mahim (West),
Mumbai-400 016.

... Applicant

V/s.

1. The State of Maharashtra
2. Inspector of Police,
Ghatkopar Police Station, Mumbai
3. Father Ajit Ghosal Telis,
Age 33, Occ. Priest/Manager of the School
having his address at Rathi Fatima
High School, Vidyavihar, Kirole, Mumbai-400 086

... Respondents

Mr. Ganesh Gole a/w Mr. Shivkumar Mishra i/b Vijendra S. Jabra for the Applicant.

Mr. Ameet S. Patil, APP for Respondent No.1 and 2-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 12th DECEMBER, 2023

JUDGMENT (Per : A.S. Gadkari, J.)

1) Applicant, original Accused No.4 has filed this Application under Section 482 of the Criminal Procedure Code for quashing of Case No.2409/PS/2011 under Sections 143, 448 and 506 of Indian Penal Code (for short, 'I.P.C.') pending on the file of the learned Additional Chief

Metropolitan Magistrate, 49th Court Vikhroli, Mumbai.

2) Heard Mr. Gole, learned counsel appearing for the Applicant and learned APP for Respondent Nos.1 and 2. Despite service, none appeared for Respondent No.3 when called out for hearing.

3) Record indicates that, by an Order dated 10th June, 2016. Rule and interim relief was granted in the present Application.

4) As per record the prosecution's case in nutshell is that, on 24th February, 2011, at about 01.00 p.m., Applicant being an employee of Sahara Samay TV News Channel along with other co-accused, entered in the school premises of Rathi Fatima High School, Vidyavihar, Mumbai and was covering the news footage. The other accused had been to the said school for questioning Respondent No.2, as to why he did not give admission to their children in Kinder Garden of the said school. Record further reveals that, it is an admitted fact on record that, Applicant had been to the said school only to cover the news report and was not a part of the alleged unlawful assembly of other co-accused. According to us, Applicant had been necessarily roped in the present crime by Respondent No.2.

5) It be noted here that, the other co-accused have been acquitted by the trial Court by its Judgment and Order dated 16th March, 1922. In para No.8 of the Judgment, the trial Court has observed that, Respondent No.2 has deposed that as incident in question had occurred in the year 2011, he was not recollecting anything about it. He has admitted that, he has

amicably settled the case with the other accused persons. Respondent No.2 did not depose anything adverse against the co-accused and therefore there is no evidence to infer that the co-accused infact committed the crime as alleged.

6) According to us, the Applicant stands on better footing than the co-accused. As noted earlier, it is admitted fact that, the Applicant had been to said school only to cover the news report on behalf of his company and had not intention and personal interest in attending the alleged assembly of the co-accused.

7) In view of the above, we are of the considered opinion that, the continuation of the said proceedings of Case No.2409/PS/2011 pending on the file of the learned Additional Chief Metropolitan Magistrate, 49th Court Vikhroli, Mumbai, now only against the Applicant will be not only undue harassment to the Applicant, but also *sheer* abuse of process of law.

8) In view of the above, Application is allowed in terms of prayer clause (d).

9) Rule is made absolute in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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