

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 155 OF 2023

Goldie Sud	..Applicant.
Versus	
State of Maharashtra	..Respondents

Mr. Goldie Sud (Applicant in person) present.
Mr. S.H.Yadav, APP for State/Respondent.
Smt. Madhuri More for Respondent No.3.

CORAM : SARANG V. KOTWAL, J.
DATE : 28 AUGUST 2023

PC :

1. The Applicant appears as a party in person. I have heard him. I have also heard learned APP for the State/Respondent and the learned counsel for the Respondent No.3.
2. The Applicant has challenged the order dated 14/03/2023 passed by the learned Additional Sessions Judge, Greater Mumbai on 14/03/2023 rejecting the Applicant's application for discharge preferred vide Exhibit-11 in the Sessions Case No.949 of 2019.
3. The Applicant is facing prosecution on the allegations of

commission of offence punishable U/s.353 of the I.P.C. The F.I.R. is lodged vide C.R.No.222 of 2005 on 02/07/2005 at Khar police station. The investigation was carried out and the charge-sheet is filed. After that, the application for discharge was preferred and it was rejected by the impugned order.

4. The case of the prosecution is that, the F.I.R. was lodged by Mahendra Sakpal. He was working as Junior Engineer with the Mumbai Municipal Corporation since 1993. On the date of lodging of F.I.R. he was working at 'H' (West) Ward. The F.I.R. mentions that nature of his duty was for inspection of unauthorized buildings and to address the grievances of the residents in that ward. On 30/06/2005 one Shoeb Memon, residing at Meleagrina building at Link Road, Bandra (W), Mumbai made a telephonic complaint that there was leakage in his flat from the upper flat and it was causing him inconvenience. It was informed that the said upper flat was in possession of the present applicant. Importantly, the F.I.R. mentions that the informant knew the present applicant.

5. On 01/07/2005 at about 2.30p.m. the informant along

with his staff went to the flat of the person who had lodged his grievance through the said telephonic call. The first informant Sakpal found substance in his grievance as there was leakage as was complained. Therefore, the first informant Sakpal and his staff went to the upper flat for carrying out the inspection. The flat was closed. When they knocked the door, the person present inside the flat refused to accept the notice for inspection. Therefore, the first informant Sakpal pasted the notice on the door of flat No.3. On 02/07/2005, at about 11.30a.m. he and his Assistant Karalkar went to the said Meleagrina building for carrying out the inspection. At that time, the Watchman allowed him to enter the compound. At that time, the applicant came near the first informant and started shoving and pushing him. He held the informant's neck and pushed him outside. He used insulting words and prevented the first informant from carrying out the inspection. Thus, according to the first informant, the applicant prevented the first informant from performing his duty. On this basis the F.I.R. is lodged.

6. The investigation was carried out. The charge-sheet was

filed. There are statements of two eye witnesses. One was Karalkar and the other was one Ramniklal Savla.

7. The Applicant submitted that, he is not disputing the fact that the first informant was a public servant as mentioned U/s.353 of the I.P.C. However, his contention is that, at the point of actual incident, he was not aware that the first informant was a public servant or that he was working with the Mumbai Municipal Corporation. He submitted that, unless the prosecution could establish that the incident occurred with full knowledge of the applicant about the designation of the first informant, the ingredients of Section 353 of the I.P.C. are not made out. He further submitted that the first informant could not have performed any duty at that point of time because the notice was pasted at 2.30p.m. on the previous day and there had to be clear 24 hours between issuance of notice and in carrying out the inspection. The incident occurred at 11.30a.m. on 02/07/2005, whereas the notice was pasted at 2.30p.m. on 01/07/2005. Therefore, at that point of time, the first informant was not performing any public duty. He further contended that the first

informant was not wearing any uniform or was not carrying any identity card which could have enabled the applicant to know that the first informant was a public servant. He relied on the Judgment of a Single Judge Bench of the Orissa High Court in the case of *Anadi Giri and others V The State*¹. He relied on the said judgment wherein it is held that, it was necessary for the prosecution to prove that the accused knew that the person assaulted in that case was a constable.

8. Learned APP, as well as, learned counsel for the Respondent No.3 opposed these submissions. Learned APP submitted that, there are 22 offences registered against the applicant. He submitted that, at this stage, view taken by the learned Additional Sessions Judge was a possible view and this Court should not interfere with the impugned order.

9. Learned counsel for the applicant, in response to this submissions further submitted that, out of these 22 offences, he is discharged from six offences. Most of these offences are lodged at the behest of local politicians. The Applicant is being harassed and,

1 1963 (1) Cri. L.J.826

therefore, the present prosecution should not be continued against him.

10. I have considered these submissions. Learned Additional Sessions Judge has observed that, the first informant himself mentioned that he knew the applicant and hence, both were acquainted with each other. Learned Judge also relied on the statements of the eye witnesses. The F.I.R. does mention that the first informant has stated that, he knew the present applicant. Apart from that, there was a notice pasted on the door of the flat No.3 on the previous day. Therefore, the applicant already knew that there would be inspection on the next day. In spite of this, the inspection was not permitted to be carried out by the applicant. Instead, he manhandled the informant and pushed him outside the premises of the building. Thus, ingredients of Section 353 of the I.P.C. are clearly made out. Section 353 of the I.P.C. reads thus:

“353. Assault or criminal force to deter public servant from discharge of his duty. - Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or

attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment or either description for a term which may extend to two years, or with fine, or with both.”

11. The first informant’s version is supported by the two eye witnesses Vishnu Karalkar and Ramniklal Savla. Though, the applicant contended that Ramniklal was an employee of the person who had made the grievance of leakage, the evidentiary value of the statement of this witness, as well as, that of other witness Karalkar will have to be decided during trial. Karalkar was another witness who had accompanied the first informant to the building for causing inspection. Both these witnesses are natural witnesses. At the stage of discharge, there statements cannot be dissected any further. It is a matter of trial. Similarly, it is also a matter of trial to see whether the applicant had requisite knowledge and intention. At this stage, there is sufficient material to show that, with that intention and knowledge he manhandled, pushed and threw out the first informant when the first informant was discharging his duty. The reliance on the Judgment of *Anadi Giri (supra)* is misplaced. In that case, the entire trial was

conducted and it was involving a police constable who was expected to be in uniform on duty. The situation in the present case is entirely different. Therefore, that Judgment will not be of any assistance to the applicant. It needs to be noted that, it is a preliminary stage of framing of charge. There is sufficient material against the applicant for framing of charge. The applicant's defence can only be established during trial after the evidence is led. Therefore, I do not see any reason to interfere with the impugned order.

12. Consequently, the Revision application is dismissed.

(SARANG V. KOTWAL, J.)