

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

Criminal Revision Application No.385 of 2022

1) Mr.Nadeem Shakil Bhujwala
Aged, 37 years Occupation:Business
Residing at Room No.51,
Eighth Floor, 11 Keshavji Naikh Road,
Aataali Mansion, Masjid Bunder,
Mumbai-400 009.

2) Mr.Jameel Ibrahim,
Aged 48 years, Occupation:- Service,
Residing at Room No.31,
Fifth Floor, 11 Keshavji Naikh Road,
Aataali Mansion, Masjid Bunder,
Mumbai-400 009.

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3)Mr Muzammil Abdul Gaffar Solanki,
Aged 30 years, Occupation :-Business,
Residing at Flat No.703, Seventh Floor,
323/234 Nishanpada Raod, Khadak,
Mumbai – 400 009.

... Applicants.

Versus

The State of Maharashtra
(Through APP)

...Respondent.

Mr Osman Chishty i/b Advocate Irafan N. Shaikh, for the
applicants.

Smt. MH Mhatre, APP for Respondent-State.

Coram : R. N. Laddha, J.

Date : 8 November 2023.

P.C. :

Heard Mr Osman Chishty, the learned Counsel appearing on behalf of the applicants and Ms MH Mhatre, the learned Assistant Public Prosecutor for the respondent State.

2. The legality, propriety and correctness of order dated 30.6.2022 passed below Exhibit 5 by the learned Additional Sessions Judge, Mumbai, in Sessions Case No.1408 of 2019, is assailed in this revision application. The learned Additional Sessions Judge, by this order rejected the application (Exh.5) filed by the applicants/accused to discharge them.

3. The applicants are the accused in Sessions Case No.1408 of 2019 whereas Govind Gawade, a Police Constable, attached to Pydhonie Police Station is the first informant. It is the case of the prosecution that since there was illegal construction being done by one Ibrahim Motiwala at 11 Keshavji Naik road, Bhat Bazar, Masjid Bunder (West), Mumbai, the MMC official had requested for police bandobast for carrying out the demolition work of illegal

construction. As per requisition, the officer of the Municipal Corporation and the police team went to the spot of incident where the applicants/accused were present. They asked Mr Vinod Ghane the officer of the MMC to show the orders of the Court for demolition of the building. When he showed a copy thereof, at that time, the applicants/accused by pointing out finger ran towards the first informant and the officers of the MMC, abused them and deterred them from performing their duties.

4. Mr Osman Chishty, the Counsel for the applicants/accused submitted that the prosecution did not specifically accuse the applicants of assaulting the complainant or other MMC officials or using criminal force and even if there was some indication or preparation to use such criminal force, it cannot be considered as an assault or using of criminal force to deter the complainant and the other MMC officials from discharging their duties. Therefore, the offence under Section 353 IPC has not been made out. Reliance is placed on the judgments of the Madras High Court in *Ilampuraiyan vs. The Inspector of Police, Rajapalayam South Police Station and Ors.*¹ and *Jayaseeli vs. State by, Inspector of*

1 2022(4) MLJ (Cri)143.

Police Arichalur Police Station Erodi District,².

5. On the other hand, Ms MH Mhatre, the learned APP submitted that the applicants assaulted the first informant and Vinod Ghane, Junior Engineer, MMC to prevent them from doing their official duties.

6. This Court has carefully considered the submissions made at the Bar and perused the material on record.

7. A plain reading of Section 353 of the Indian Penal Code shows that, to attract the offence under this Section, there should have been an assault or use of criminal force on any public servant in the execution of his duty as a public servant or with an intention to prevent or deter such public servant from discharging his duty, the accused should have committed any act.

8. In the present case, admittedly, there was no use of criminal force. The applicants/accused are alleged to have shown a finger to the complainant and other MMC officials, abused them, and ran towards them. The term ‘*assault*’ is defined in Section 351 of the Indian Penal Code. The section

² Cri.Revision Case No.190 of 2008 dt.2.2.2010

requires two things; i) making of any gesture or preparation by a person in the presence of another, ii) intention or knowledge of likelihood that such gesture or preparation will cause the person present to apprehend that the person making it is about to use criminal force to him.

9. The complainant and Vinod Ghane, admittedly were the public servants and at the relevant time they were discharging their official duties. The material available on record does not suggest that the applicants intended to cause any alarm in the mind of the complainant or MMC officials. It is pertinent to note that the MMC officials visited the site of incident along with the police team. Moreover, neither the FIR nor the statement of the complainant and other witnesses, mention any abusive words allegedly used by the applicants. Admittedly, the applicants were not the owners of the alleged illegal construction. The FIR and the statements demonstrate that MMC official was showing them a copy of an opinion of the Legal Officer, which resulted in heated argument with the MMC official, when they asked to see the Court's order.

10. In the case at hand, even if the allegations made in the complaint are accepted at its face value without being

controverted would not make out *prima facie* case against the applicants for the offence punishable u/s 353 of IPC. Since the offence u/s 353 IPC is not made out against the applicants and the remaining Sections are triable by the Magistrate's Court, the learned Sessions Court should transfer the matter to the competent Magistrate's Court for trial and disposal.

11. The revision application is disposed of in the above terms.

[R. N. Laddha, J.]