



Judgment

10 apl 323.23

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 323/2023

1. Dyanba Ramji Parwe,
Aged about 50 yrs., Occ. Service,
2. Kailash Ganpat Sathe,
aged about 50 yrs., Occ. Agriculturist,
3. Vaibhav Kailash Sathe,
Aged about 20 yrs., Occ. Student,
4. Dnyaneshwar Sukhdeo Parwe,
Aged about 22 yrs., occ. Student,
5. Sourabh Kailash Sathe,
Aged about 18 yrs., Occ. Student,

All R/o. Loni (Khurd), Tq. Risod,
Dist. Washim.

...

APPLICANTS
(Org. Accused)
(On R.A.)

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Loni, Khurd, Tq. Risod, Washim.
2. G.B. Latabai w/o. Madukar Gade,
Aged about 51 yrs., Occ. Agriculturist,
R/o. Loni Khurd, Tq. Risod, Washim.

...**NON-APPLICANTS**

Mr. V. Paliwal, Advocate for applicants.
Mr. S.M. Ghodeswar, APP for non-applicant No.1/State.
None for non-applicant No.2.

**CORAM : VINAY JOSHI AND
M. W. CHANDWANI, JJ.**
DATE : 20.10.2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2. **Admit.**

3. This is an application seeking to quash charge-sheet No. 209/2022 arising out of Crime No. 798/2021 registered with Police Station Loni Khurd, Tq. Risod, Dist. Washim for the offence punishable under Sections 295, 143, 504, 506 of the Indian Penal Code. At the instance of report lodged by informant lady, the crime has been registered.

4. It is informant's case that on 20.11.2021 in the evening, she learnt from villagers that in all 19 persons including applicants have damaged a photo frame of Shri Chhatrapati Shivaji Maharaj by pelting stones, torn the photo and thus, insulted the religious feeling

3

of particular class. On the basis of said report, the Police registered crime, investigated and filed charge-sheet.

5. The learned counsel appearing for the applicants would submits that the entire police paper does not disclose any material in support of the allegation. Particularly, it is submitted that neither informant nor anybody has seen alleged occurrence and therefore, continuation of the prosecution amounts to abuse of the process of the Court.

6. On the other hand, learned APP after perusing the entire-charge-sheet conceded the position that all the statements are of hearsay nature. In other words, the Police have not recorded statement of a single person who has witnessed to the occurrence. Bare reading of First Information Report ('FIR') equally shows that the informant is not the eye-witness, but on the basis of hearsay information that too from the villagers, she has filed report. Section 60 of the Indian Evidence Act postulates that oral evidence must be direct, meaning thereby if it relates to a fact which can be seen, then it must be the evidence of a witness who says, he saw it. In the light

of said legal position, there is no prima facie material to proceed further.

7. The entire police paper does not disclose involvement of present applicants. The facts of the case squarely falls in guideline Nos. 1 and 3 of para 108 as the decision of the Supreme Court in case of **State of Haryana Vs. Bhajan Lal, AIR 1992 (SC) 604**. In the circumstances, continuation of the prosecution amounts to abuse of the process of the Court. In view of that, applications is allowed. We hereby quash and set aside charge-sheet No. 209/2022 arising out of Crime No. 798/2021 registered with Police Station Loni Khurd, Tq. Risod, Dist. Washim for the offence punishable under Sections 295, 143, 504, 506 of the Indian Penal Code.

(M. W. CHANDWANI, J.)

(VINAY JOSHI, J.)