



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.1158 OF 2022**

Shaikh Tareq Mohammad Abdul Latif,
Age 37 years, Occu. Business,
R/o Shahnaz Mansion, Lake View Plaza,
N-12, Cidco, Aurangabad. ..Applicant

Versus

1. The State of Maharashtra,
Through its Police Inspector,
City Police Station, Daultabad, Aurangabad.
2. Matin Mujib Syed,
Age 30 years, Occ. Business,
R/o Mujib Colony, Daultabad,
Tq. & Dist. Aurangabad.
Mob. No. 9890158707 ..Respondents

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Mr. V. A. Munde h/f Mr. S. S. Thombre, Advocate for the Applicant.
Mr. G. A. Kulkarni, APP for Respondent No.1.
Mr. K. N. Bhosale, Advocate for Respondent No.2 (Appointed).

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

Reserved on : 27th SEPTEMBER, 2024.
Pronounced On : 11th OCTOBER, 2024.

JUDGMENT (Per S. G. Chapalgaonkar, J):-

1. The applicant has approached this Court under Section 482 of the Criminal Procedure Code impugning FIR in Crime No.19/2022 dated 13.02.2022 registered with Daulatabad Police Station, Dist. Aurangabad for the offence punishable under Section 295 of the Indian Penal Code as well as consequential criminal proceeding in SCC No.13343/2022 pending before Judicial Magistrate First Class, Aurangabad.

2. The respondent no.2 lodged report dated 13.02.2022 alleging that he is resident of Daulatabad. Since long, people belonging to Muslim community are using portion of gairan land in Gut Nos.9 and 11 at Daulatabad as burial ground. On 13.02.2022, while he was proceeding towards Mombatta Lake, he noticed that 3 to 4 unknown persons were engaged in digging and leveling ground at burial ground with the help of JCB machine and tractors. While doing so, earth material was thrown on grave (qabar) and its stones were scattered. On enquiry with persons engaged at work, they informed that work is carried as per instruction of Mr. Tarek Latif (applicant). It is, therefore, alleged that applicant/accused has unauthorizely carried out work of digging and leveling of land at Muslim grave yard and outraged religious feelings or beliefs.

3. The aforesaid report lead to registration of FIR in Crime No.19/2022 for offence punishable under Section 295 of the Indian Penal Code against applicant.

4. Mr. Munde, learned Advocate appearing for the applicant vehemently submits that applicant is innocent person and falsely implicated in aforesaid crime. He would submit that land bearing Gut Nos.9 and 11 were never declared as grave yard. It is a private ownership land. On 23.04.2021 the applicant had entered into an agreement to sale with owner of Gut No.9/1. The Additional Tahsildar had granted permission for leveling of land vide order dated 04.02.2022. The owners of land had applied for measurement and fixation of boundaries to the competent authority. Consequently, measurement was carried and boundaries were fixed vide communication dated 06.07.2021 by Deputy Superintendent of Land Record, Aurangabad. The authorities had prepared measurement map showing boundaries of

land Gut No.9/1. The present complaint is filed only with intention to obstruct execution of sale deed. Mr. Munde would further submit that work of leveling was executed by original owners after following due process of law. There is no intentional act of defiling to insult religious feelings. The applicant belongs to same community. There was no place of worship or sacred object that could have been defiled or damaged. The work of leveling was going on after obtaining permission from competent authorities. Hence, no offence under Section 295 of the Indian Penal Code can be made out on the basis of contents of FIR.

5. Per contra, Mr. Kulkarni, learned APP appearing for respondent-State and Mr. Bhosale, learned Advocate appearing for respondent no.2 vehemently opposed application contending that stipulations in the FIR clearly names applicant on whose instructions work was being carried at the grave yard. The spot panchanama clearly depicts that there was destruction or damage to the sacred object. The defilement was intentional and amounts to insult religious feelings.

6. We have consideration submissions advanced on behalf of learned Advocates appearing for respective parties. The minute reading of FIR makes it clear that on the basis of hearsay information from persons, who were engaged in leveling of lands, the name of applicant is incorporated in the FIR. Admittedly, applicant was not seen on the spot. The 7/12 extract of land Gut No.9/1 shows that name of Abhijeet Bhaskarrao Deshmukh is entered in the revenue record alongwith others in ownership column. Apparently, the applicant is not named as owner or occupier of the said property. The applicant has placed on record notarized document in the form of agreement to sale executed by

Abhijeet Deshmukh and another in his favour. However, the possession was not delivered to him and such agreement was contingent depending upon various permissions. The vendors were put under obligation to get land cleared from forest zone. The Additional Tahsildar vide order dated 04.02.2022 permitted leveling of the land and fencing to the vendors. The Superintendent of Land Record, Aurangabad carried measurement on application of vendors on 25.06.2021. Perusal of revenue document nowhere depicts existence of grave yard at the spot.

7. FIR stipulates that while doing leveling work, the earth material was thrown on grave and stones were scattered. Perusal of spot panchanama depicts that land abutting to the grave has been leveled and earth material was seen on the grave. The statement of witnesses are also in the same line. It appears that, Investigating Officer has made correspondence with Tahsil Office to find out whether grave yard was in existence in Gut Nos.9 and 11. However, no authorized document is made part of charge-sheet depicting existence of grave yard in Gut No.9. It appears that, Gut No.11 is gairan land. However, there is no entry as regards to the existence of grave yard. The communication dated 22.02.2022 by Additional Tahsildar depicts that on his joint inspection with Circle Officer on 15.02.2022, collection of earth material was seen nearby the grave. No damage or defilement of grave could be noticed. Further, inspection report submitted by the Circle Officer stipulates that land Gut No.9/1 do not have grave yard.

8. In light of aforesaid factual matrix, it is to be examined whether on the basis of averments in the FIR and material in the charge-sheet, *prima facie*, triable case can be made out against the

applicant or criminal proceeding can be permitted to be continued.

Section 295 of the Indian Penal Code states as under:

“295. Injuring or defiling place of worship with intent to insult the religion of any class —

Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

9. To bring home ingredients of aforesaid crime, destruction, damage or defilement of any place of worship or sacred object held by class of persons would be necessary. Further, such destruction must be with intention of insulting religion of class of person or with knowledge that class of persons is likely to consider such destruction as an insult to their religion. Admittedly, in present case, there is nothing to show that damage is caused to the object of worship. The word 'defile' cannot be confined to the idea of making, dirty but must also be extended to ceremonial pollution, but it is certainly necessary to prove pollution. In present case, from the contents of FIR and panchanama it can be seen that object of on going work at the place was leveling land, which is of private ownership and no existence of grave yard was seen. In adjacent gut number, existence of some graves was noted and during cleaning or leveling, some earth material appears to have been flown to the graves. Accepting all these contents as it is, it is difficult to stretch factual matrix to such an extent to bring it within mischief, which is made punishable under Section 295 of the Indian Penal Code. The object of Section 295 of the Indian Penal Code is to punish those persons, who intentionally wound religious feelings of others by injuring or defiling places of worship. The core

of section is to prevent wanton insult to religious notions of class of persons.

10. In present case, applicant belongs to same class of citizen as that of the informant. There is nothing in the charge-sheet that would depict his intention to defile or damage any object held as sacred by class of persons. Infact, there is nothing to depict that applicant involved or indulged himself in any act of injuring or defiling sacred place with intention to insult religion or class.

11. In light of aforesaid legal factual aspects, we find that ingredients of Section 295 of the Indian Penal Code would not attract in present case. Therefore, applying parameters of jurisdiction defined by the Supreme Court of India in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***¹, we are inclined to exercise our powers under Section 482 of the Criminal Procedure Code to avoid abuse of process of law, since we see that possibility of civil dispute being turned into criminal prosecution cannot be ruled out and malicious use of procedure under law cannot be ruled out, apart from fact that ingredients of offence could not be made out against applicant. Hence, we proceed to pass following order:

ORDER

- a. Criminal Application is allowed.
- b. The FIR in Crime No.19/2022 dated 13.02.2022 registered with Daulatabad Police Station, Dist. Aurangabad for the offence punishable under Section 295 of the Indian Penal Code as well as consequential criminal proceeding in SCC No.13343/2022 pending before Judicial Magistrate First Class, Aurangabad, is hereby quashed and set aside.

¹ AIR 1992 SC 604.

c. Criminal Application is disposed of.

d. Since Mr. K. N. Bhosale, learned Advocate is appointed through legal aid to represent respondent no.2, the Secretary, High Court Legal Services Sub-Committee, Aurangabad Bench do pay the fees of the appointed counsel for respondent no.2 as per schedule.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE