



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1996 OF 2022

Sushil S/o Premchand Jain,
Age-51 years, Occu:Business,
R/o-41/A, Kanhaiya Sankul,
Mayur Colony, Near Mayur Garden,
Deopur, Dhule, Tq. And Dist-Dhule

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Dhule City Police Station,
Dhule,
- 2) Bhushan S/o Namdeo Khedwan,
Age-47 years, Occu:Service as
Police Head Constable,
Dhule City Police Station, Dhule,
Tq. and Dist-Dhule.

...RESPONDENTS

...
Ms. Rashmi S. Kulkarni Advocate h/f. Mr. V.P. Raje Advocate
for Applicant.
Ms. R.P. Gour, A.P.P. for Respondent Nos. 1 and 2.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATE : 5th DECEMBER, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present application has been filed under Section 482 of the
Code of Criminal Procedure, initially for quashing the First

Information Report (for short "the FIR") vide Crime No.100 of 2022 registered with Dhule City Police Station, District-Dhule and later on by way of amendment, for quashing the proceedings in S.C.C. No.897 of 2023 pending before the learned Judicial Magistrate First Class, Dhule for the offence punishable under Sections 153-B(1)(c), 505(2) read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Ms. Rashmi Kulkarni holding for learned Advocate Mr. Raje for applicant and learned APP Ms. Gour for respondents.

3. Learned Advocate appearing for the applicant has stated that the FIR has been lodged by respondent No.2 in his official capacity. He was the Police Head Constable working in the Secret Information Department. He had come across a video clip from WhatsApp group which was of the persons from Muslim community and he says that it was created to disturb the peace and harmony in the society. However, the present applicant is a Hindu and he is one of the member of WhatsApp group, namely "Shramrajya". It is then stated in the FIR that the applicant has also created one video clip in his voice against the Muslim community to create strained relationship amongst Hindu and

Muslim community. However, the ingredients of the offence under which the FIR has been lodged as well as the charge-sheet is filed, are not attracted. In the FIR it is not stated that the present applicant had prepared the said video clip. He being the member of the WhatsApp group will not make him responsible for the acts in the group as he is not the administrator. The evidence has not been collected when the charge-sheet is filed, as to whether the applicant had forwarded the said message to anybody. The source from which the said video was received on the WhatsApp group, has not been found out and therefore, continuation of the criminal proceedings would be an abuse of process of law.

4. Learned APP representing the respondents, has submitted that the contents of the video clips which were circulated on the WhatsApp groups, would certainly show that its intention was to create riot. As regards Dhule city is concerned, there was history of communal riots in 2008. It was on account of some banners those were raised and therefore, when it was seen by present respondent No.2 that such content is tried to be circulated amongst the public, he has lodged the FIR.

5. It will not be out of place to mention here that when it was found by us that the investigating officer Mr. Kailas Mahadu Damodar, then serving with City Police Station, Dhule and now as Police Sub Inspector, Ramanand Nagar Police Station, Jalgaon, had not obtained the prior permission or sanction under Section 196 (1-A) of the Code of Criminal Procedure, had directed to him to file affidavit. Such affidavit has been filed by him. He has admitted that he had not sent the papers to the District Magistrate, Dhule for getting the requisite sanction or even to the State Government before he has filed the charge-sheet. But he says that his action is not intentional or deliberate. He ought to have taken the said sanction but due to pressure of work and directions from the seniors to submit the charge-sheet as early as possible, he has filed the charge-sheet. He has been then transferred from Dhule to Jalgaon.

6. The first and foremost fact to be noted is that by order dated 18th April 2023, the learned Magistrate before whom the case is pending, has taken cognizance of the offence for the offence punishable under Section 153-B (1) of the Indian Penal Code only though the charge-sheet was filed for the offence punishable under Sections 153-B(1)(c), 505(2) read with Section

34 of the Indian Penal Code. In view of Section 196 (1-A) of the Code of Criminal Procedure, no Court shall take cognizance of the offence punishable under Section 153-B of the Indian Penal Code except with the previous sanction of the Central Government or of the State Government or of the District Magistrate. Here the cognizance has already been taken by the concerned Magistrate on 18th April 2023 totally in ignorance of Section 196 (1-A) of the Code of Criminal Procedure. Admittedly, there is no sanction taken from the District Magistrate or the State Government by the investigating officer. Thus, at the cost of repetition, it is stated that when the cognizance has been taken by the learned Magistrate without application of mind, the accused against whom the cognizance has been taken, cannot be asked to face the trial. Now the investigating officer says that he would obtain the sanction and place it before the concerned Magistrate under Section 178(3) of the Code of Criminal Procedure. This is another ignorance of law. When cognizance has been taken (in violation of provisions of law), the said defect going to the root of the case, cannot be set right at the later stage. The excuse tried to be given by the investigating officer is unacceptable. When there is mandatory requirement, it cannot

be ignored by giving reason that due to work pressure that mandatory requirement has not been fulfilled or completed.

7. Once again we are required to observe that the Judicial Magistrates First Class are not applying their minds when it comes to take the cognizance of the offences. If there is any legal bar for taking cognizance in respect of a particular offence, then whenever case is produced before them containing those sections, they should be on guard. It is their mandatory duty to see that the said legal requirement is fulfilled and there is evidence to that effect in the charge-sheet. When such kind of inherent defect was there, the learned Magistrate could have waited and asked the investigating officer, as to whether he has made any correspondence with the District Magistrate or the State Government or the Central Government, as the case may be. Hurried orders of taking cognizance without application of mind, cannot be allowed to sustain.

8. In fact, above said ground is sufficient for us to quash the FIR and the charge-sheet. But since the other grounds are also raised, those are cursorily considered. It appears from the FIR that in two WhatsApp groups some video clips were found i.e.

two different video clips, which were allegedly creating hatred against the other community and the intention was to create communal riots. It is not the case in the FIR or even the charge-sheet does not say that the said clip was in the WhatsApp of the applicant alone. It was in the WhatsApp group, as alleged. The FIR and the contents of the charge-sheet are totally silent as to what was the source of the video clip, who had received it and what was the reaction of that person. From the group of the applicant, he is the only person who has been made as an accused. It is tried to be stated that the present applicant had placed the said video in his WhatsApp group by name, "Shramrajya". But, at the same time the informant is using the word "forward". That means the source was different and the present applicant had forwarded it. There is absolutely no investigation, from where the present applicant had received the said clip. We are also of the opinion that it appears that the investigating officer Mr. Kailas Mahadu Damodar has no knowledge to investigate the matters in which electronic evidence is involved. Mere mobile number of the applicant cannot be taken as sufficient evidence and with the use of word "forward", it was necessary for the investigating officer to go up

to the point where that clip was prepared and had come into social group.

9. Therefore, for the reasons stated, on both counts we are of the opinion that it would be unjust to ask the applicant, who is accused No.5, to face the trial. This is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, we pass following order:-

ORDER

(I) The Criminal Application stands allowed.

(II) The proceedings in S.C.C. No.897 of 2023 pending before the learned Judicial Magistrate First Class, Dhule for the offence punishable under Sections 153-B(1)(c), 505(2) read with Section 34 of the Indian Penal Code, arising out of the First Information Report vide Crime No.100 of 2022 registered with Dhule City Police Station, District-Dhule, stands quashed and set aside as against the applicant – Sushil S/o Premchand Jain.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/DECE24