



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.2345 OF 2020**

Dr. Ganesh S/o. Shridharrao Dhawale,
Age: 45 years, Occu: Medical Practitioner,
R/o. At Post. Limbaganesh, Tq. Beed,
Dist. Beed.

..Applicant

Versus

1. The State of Maharashtra
Through Police Inspector,
City Police Station Beed,
Tq. and Dist. Beed.
2. The Superintendent of Police,
Beed, Tq. & Dist. Beed.
3. Dr. Ashok Sanpatrao Thorat,
District Civil Surgeon Beed,
Tq. & Dist. Beed.

..Respondents

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Mr. M. S. Bhosale, Advocate for the Applicant.
Mr. A. R. Kale, APP for Respondent Nos.1 and 2.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 20th SEPTEMBER, 2024.**

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

1. The applicant has approached this Court under Section 482 of the Criminal Procedure Code seeking quashment of FIR in Crime No.210/2020 dated 09.09.2020 registered with City Police Station Beed, Tq. & Dist. Beed for offences punishable under Sections 188, 505(2) of the Indian Penal Code and Section 51(b) of the Disaster Management Act, 2005. During the pendency of this application, charge-sheet came to be filed before Chief Judicial Magistrate at Beed. Consequently, applicant has added prayer to quash and set aside charge-sheet and consequential criminal

proceeding in R.C.C. No.144/2021 pending before Chief Judicial Magistrate at Beed.

2. The respondent no.3-District Civil Surgeon, Beed lodged report dated 09.09.2020 alleging that he is discharging his duties at Civil Hospital, Beed. The emergency situation has been arose due to outbreak of Covid-19 pandemic. There are large number of patients in Beed District. The Health Department is busy in treating such patients and providing health facilities. In this situation, accused/applicant has uploaded Facebook post defaming Health Department and creating unrest amongst patients. Further, accused declared name of Covid victim through his social media post, which is prohibited under law. The accused person is, therefore, guilty of offences punishable under Sections 505(2), 188 of the Indian Penal Code and Section 51(b) of the Disaster Management Act, 2005.

3. On the basis of aforesaid report, Crime No.210/2020 has been registered with City Police Station Beed against applicant. After completion of investigation, charge-sheet has been filed.

4. Mr. Bhosale, learned Advocate appearing for the applicant submits that prosecution has been withdrawn in respect of offences punishable under Section 188 of the Indian Penal Code and Section 51(b) of the Disaster Management Act, 2005 as per Government Resolution dated 20.09.2022. Therefore, criminal proceeding is pending only to the extent of offence punishable under Section 505(2) of the Indian Penal Code against applicant/accused. He would invite attention of this Court to the order dated 13.09.2024 passed by the Chief Judicial Magistrate, Beed, thereby permitting withdrawal of the prosecution for offences punishable under

Section 188 of the Indian Penal Code and Section 51(b) of the Disaster Management Act, 2005 and permitting prosecution to the extent of Section 505(2) of the Indian Penal Code.

5. Mr. Bhosale would submit that no case can be made out against applicant for offence punishable under Section 505(2) of the Indian Penal Code on the basis of stipulations in the FIR. The applicant has raised genuine concern as regards to the health services and facilities provided by the District Administration during pandemic situation. He would submit that to attract offence under Section 505(2) of the Indian Penal Code, the publication or circulation of the statement must be with intent to create or promote enmity, hatred or ill-will between classes on the ground of religion, race, place of birth, residence, language, caste or community etc. In present case, no such intent is discernible. He would, therefore, urge to quash and set aside FIR and consequential proceeding pending against applicant.

6. Per contra, Mr. Kale, learned APP appearing for respondent-State submits that when District Administration was doing its best to save maximum patients from pandemic, applicant was busy in creating unrest in the mind of public at large and creating ill-will against employees of the Health Department.

7. We have considered submissions advanced on behalf of learned Advocate appearing for respective parties. Chapter XXII of the Indian Penal Code deals offences relating to criminal intimidation, insult and annoyance. The relevant part of Section 505 of the Indian Penal Code reads as under:

“505. Statements conducing to public mischief —
(1)
(a)

(b)

(c)

(2) Statements creating or promoting enmity, hatred or ill-will between classes —

Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3)”

8. The cognizance of aforesaid offence is guarded by Section 196 of the Criminal Procedure Code. The relevant part of Section 196 of the Criminal Procedure Code reads as under:

“196. Prosecution for offences against the State and for criminal conspiracy to commit such offence

(1) No Court shall take cognizance of—

(a) any offence punishable under Chapter VI or under section 153A, section 295A or sub-section (1) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government

(1A) No Court shall take cognizance of—

(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate”

9. The plain reading of aforesaid provision, particularly Sub-Section (1A), which is inserted by Act 63 of 1980 w.e.f. 23.09.1980 stipulates that no Court shall take cognizance of any offence under

Sub-Section (2) or (3) of Section 505 of the Indian Penal Code, except with previous sanction of the Central Government or of the State Government or of the District Magistrate. In light of aforesaid provision, we have specifically called upon learned APP to point out, if any, sanction has been accorded by the competent authority. The learned APP on specific instructions made statement that no such sanction has been accorded or even attempted before filing of charge-sheet. From the record of proceeding before the learned Magistrate we find that learned Magistrate has taken cognizance after filing of charge-sheet in R.C.C. No.144/2021 on 01.03.2021. The Sub-Clause (1A) of Section 196 of the Criminal Procedure Code clearly stipulates that no Court shall take cognizance of offence under Sub-Section (3) of Section 505 of the Indian Penal Code, except with previous sanction of the Central Government or the State Government or of the District Magistrate. Admittedly, neither any proposal for sanction was moved to the competent authority nor such sanction has been accorded. We find that in absence of sanction, it would not be permissible for learned Magistrate to take cognizance of offence under Section 505(2) of the Indian Penal Code. Hence, charge-sheet and consequential criminal proceeding in pursuance of FIR in Crime No.210/2020 dated 09.09.2020 registered with City Police Station Beed is liable to be quashed and set aside. Hence, we proceed to pass following order:

ORDER

- a. Criminal Application is allowed.
- b. The FIR in Crime No.210/2020 dated 09.09.2020 registered with City Police Station Beed, Tq. & Dist. Beed for offences punishable under Section 505(2) of the Indian Penal Code as well

as criminal proceeding in R.C.C. No.144/2021 pending before Chief Judicial Magistrate at Beed, is hereby quashed and set aside.

c. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Devendra/September-2024