



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 3553 OF 2023

Arjun S/o Anandrao Chavan
Age : 70 years, Occ : Pensioner,
R/o Plot No. 54, Sector C, N-4,
CIDCO, Taluka & Dist. Aurangabad

..APPLICANT

-VERSUS-

1. The State of Maharashtra,
through the Officer in charge,
CIDCO Police Station,
Taluka & District : Aurangabad.
2. Kashinath S/o Murlidhar Phalak
Age : 57 years, Occ : Govt. Officer,
R/o Plot no. 106/A, Jal Vishwa Bharati Colony,
Near Chetak Ghoda Chowk,
Garkheda Parisar, CIDCO,
Taluka & District Aurangabad.

..RESPONDENTS

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Shri Rajendra S. Deshmukh, Senior Advocate i/b Shri Kunal Kale and
Shri Devang R. Deshmukh, Advocates for Applicant.
APP for Respondent- State : Shri A.V. Lavate
Advocate for Respondent No.2 : Shri R.R. Shinde h/f Mr. S.S. Tope
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**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATED : 03rd DECEMBER, 2024.

JUDGMENT (PER ROHIT W. JOSHI, J.) :

. The applicant in the present application is aggrieved by
the registration of offence against him with CIDCO Police Station,

Aurangabad, vide Crime No.0306/2019, for the offence punishable under Sections 353, 332, 504, 506 read with Section 34 of the Indian Penal Code (IPC), so also charge-sheet No. 103/2020 dated 15.05.2020 and criminal case, being Regular Criminal Case No.1126/2020, registered against him and pending on the file of the learned Additional Chief Judicial Magistrate at Aurangabad. The applicant has invoked Section 482 of the Code of Criminal Procedure (Cr.P.C.) in order to seek quashment of FIR and criminal proceeding.

2. Respondent No.2 has lodged FIR on 27.05.2019 against the present applicant and one G.B. Jagtap. Respondent No.2 was working as Incharge Deputy Engineer with Water Supply Department of Aurangabad Municipal Corporation on 25.05.2019. He has stated in FIR that a water supply pipeline of the Municipal Corporation in N-4 area was damaged on 24.05.2019 as a consequence of which water supply was adversely affected in the area. He has stated that the necessary repairs were carried out on 24.05.2019 at around 11.30 p.m. since water supply was to be made on 25.05.2019. He has stated that the water supply could not be commenced at the regular time i.e. at 6.00 a.m. on 25.05.2019, since appropriate level was not achieved in the water tank, however, the water supply was resumed at 8.00 a.m. after appropriate level was achieved. The allegation in FIR is that Corporator of concerned ward had visited the water tank in N-5 at

around 7.45 a.m. along with other ladies. A verbal duel ensued between the officials of the Corporation and Corporator and other citizens, which was settled with an intervention of the Executive Engineer. He states that at that time, one G.B. Jagtap had slapped him on his back. As against the applicant, the allegation is that he got agitated and inquired from respondent No.2 and other officials as to why regular uninterrupted water supply was not being provided and thereafter hurled abuses at them. It is alleged that having acted thus, Shri G.B. Jagtap and the present applicant created obstacles in the official work. On the basis of these allegations, offence under the aforesaid provisions is registered against the present applicant.

3. After completion of investigation, the statements of the Executive Engineer of Aurangabad Municipal Corporation, Tanker Supervisor, Lineman, Security Guard and Junior Engineer working with Aurangabad Municipal Corporation have been recorded. Based on the said report, criminal case is registered against the applicant and the said Jagtap vide R.C.C. No. 1126/2020.

4. Shri Rajendra Deshmukh, learned Senior Advocate appearing on behalf of the applicant contended that perusal of FIR and other statements recorded by the prosecution would demonstrate that the alleged incident, wherein the applicant hurled abuses at

respondent No.2 and other officials of the Corporation, had occurred after the water supply was resumed and verbal duel between Corporator and other citizens on one side and officials of the Corporation, had come to an end. He states that although at this stage, the Court may not go into the correctness or veracity of the allegations, the contents of FIR and statements are taken on their face value demonstrate that the alleged wrongful act on the part of the applicant did not cause any hindrance in discharge of duty of respondent No.2 as a public servant. He states that essential ingredients of Section 353 of the IPC are that a public servant should be subjected to assault or use of criminal force during the course of execution of his duty or with an intent to prevent or deter him from discharging his duty. He states that these essential ingredients are not made out in the present matter, and therefore, registration of offence under Section 353 of the IPC is uncalled for. As regards Section 332 of the IPC, he has drawn our attention to the contents of FIR and statements to point out that the present applicant has not caused any hurt to respondent No.2 or any other officials of the Corporation and as such, Section 332 of the IPC can also not be invoked against him. He would then state that other sections i.e. Sections 504 and 506 of the IPC are non-cognizable offences. He has also drawn our attention to Sections 350 and 351 of the IPC to contend that the applicant has neither used any force against respondent No.2 nor has made any gesture towards

respondent No.2 to cause an apprehension that he would use criminal force against him. He, therefore, states that since ingredients of Sections 350 and 351 of the IPC are not made out, Section 353 of the IPC will also not be attracted since assault or use of criminal force are essential ingredients of the offence under Section 353 of the IPC. He, therefore, submits that FIR and consequent criminal prosecution are liable to be quashed against the applicant.

5. Per-contra, Shri A.V. Lavate, learned APP representing respondent No.1 and Advocate Shri R.R. Shinde appearing on behalf of respondent No.2 contend that respondent No.2, who is a public servant, was subjected to assault and criminal force while he was on duty, and therefore, ingredients of Section 353 of the IPC are made out.

6. Having heard learned respective Advocates and on perusal of the contents of FIR and statements recorded, we are of the opinion that there is absolutely no material on record to indicate that the present applicant had used criminal force against respondent No.2 or that he made any gesture or preparation showing his intention to use criminal force against respondent No.2. As such, essential ingredients of Sections 350 and 351 of the IPC are not made out from the material on record. Assault or use of criminal force are essential

ingredients of Section 353 of the IPC. Section 353 of the IPC will be attracted when a public servant is assaulted or subjected to criminal force while he is performing his duty as public servant with intent to prevent or deter him from discharging his duty as public servant. The material on record is also not sufficient to make out second ingredient of Section 353 i.e. intention to prevent or deter a public servant from performing his duty as public servant. Thus, we are of the considered opinion that essential ingredients of Section 353 of the IPC are not made out in the matter against the present applicant.

7. As regards Section 332 of the IPC, it is undisputed position on record that the applicant has not caused any hurt to respondent No.2 or any other Officer of the Corporation. Section 332 of the IPC is clearly not made out against the applicant.

8. Offences under sections 353 and 332 of the IPC are cognizable in nature. The other provisions under which FIR is registered are sections 504 and 506 of the IPC, both of which are non-cognizable.

9. Since the prosecution has failed to make out any case under the cognizable sections, continuation of prosecution pursuant to the FIR is prohibited by law. We are therefore of the opinion that FIR

and criminal prosecution against the applicant are liable to be quashed. We therefore pass the following order :-

ORDER

- (i) The application is allowed.
- (ii) The offence registered against applicant - Arjun S/o Anandrao Chavan with CIDCO Police Station, Aurangabad, vide Crime No.0306/2019, for offence punishable under Sections 353, 332, 504, 506 read with Section 34 of the Indian Penal Code, so also charge-sheet No.103/2020 dated 15.05.2020 and criminal case, being Regular Criminal Case No.1126/2020 pending on the file of the learned Additional Chief Judicial Magistrate at Aurangabad, are hereby quashed.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

sga/