

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2322 OF 2011

1) Shri. Bilal Qutubuddin Shaikh
Age – 51, Occ – Business,
R/at : Mehabub Nagar, Mohol,
Taluka Mohol, District Solapur

2) Shri. Riyaz Nijam Shaikh
Age – 32, Occ – Daily Wages,
R/at : Pokhrapur, Taluka Mohol,
District Solapur

3) Shri. Allamin Ramzan Mulani
Age – 32, Occ – Daily Wages,
R/at : Pokhrapur, Taluka Mohol,
District Solapur.

.... Petitioners

V/s.

1) State of Maharashtra

2) Shri. Shreekant Padule
PI. Mohol Police Station,
Taluka Mohol, District – Solapur.

3) Shri. Irafan Mubarak Shaikh
Police Constable Buckle No.1635,
Mohol Police Station, Taluka Mohol,
District Solapur.

4) Shri. Nilakanth Jadhav
Police Constable Buckle No.159,
Mohol Police Station, Taluka Mohol,
District – Solapur.

.... Respondents

Mr. Rahul S. Kadam for the Petitioners.
Mr. Ajay Patil, APP for the State.

**CORAM: A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 15th APRIL, 2024
PRONOUNCED ON : 11th JUNE, 2024**

JUDGMENT : [PER : SHYAM C. CHANDAK, J.] :-

1) Present Petition filed under Article 226 of the Constitution of India is seeking to declare arrest of the Petitioners under Section 151(1) of the Criminal Procedure Code (for short '*Cr.P.C.*'), as illegal for quashing of Chapter Case No.452/2011 instituted against them under Section 107 of Cr.P.C. dated 16th July 2011 by Mohol Police Station, Dist. Solapur and damages for alleged illegal arrest.

1.1) Respondent Nos.2 to 4 have resisted the Petition by filing their independent Affidavits-in-Reply.

2) Heard Mr. Kadam, learned Advocate for the Petitioners and Mr. Patil, learned A.P.P. for the State. Perused entire record.

3) Record indicates that, Rule was granted on 20th July, 2012 when Ms. A.S. Pai, learned A.P.P. waived service on behalf of Respondent No.1-State and Mr. B.D. Joshi, learned Advocate waived service on behalf of Respondent Nos.2 to 4. However, none appeared for Respondent Nos.2 to 4 when taken up for final hearing.

4) The facts giving rise to this Petition are as under :-

4.1) That, on 15th July 2011, at about 22:45 hours, Mohol Police Station arrested the Petitioners by invoking Section 151(1) of Cr.P.C. and on 16th July, 2011 produced them before the Taluka Magistrate by registering a Chapter Case No.452/2011 to proceed under Section 107 of Cr.P.C. against them and their associates *viz.*, Innus Mehboob Mulani and Nasir

Abbas Mulani.

4.2) In the said case it was alleged that, the Petitioners are members of Muslim community. They had submitted a Representation titled as ‘भीक नको हक्क पाहिजे’ with reference to a burial ground situated at village Pokhrapur, Taluka Mohol. The Representation was addressed to the Chief Minister, Maharashtra State, Mumbai with a copy to various authorities and agencies of the Government.

4.3) In the Representation it was claimed that, about 100 years ago, one person namely Saudagar Nama Maske, resident of Pokhrapur, had given 37 *Guntha* of land in Gat No.258 bearing Survey No.71/1 in presence of the Collector, Solapur. However persons namely Mr. Chavhan and Mr. Shendge occupying Gat No.258 and Gat No.445 respectively, have encroached upon the said land and cultivating it. On 27th December, 2010 when one aged Muslim woman expired and her body was taken to the said burial ground for cremation, said Mr. Chavhan and Mr. Shendge did not allow to cremate her. Therefore, the Petitioners and their community members put the body of the said woman near a bridge, at village Pokhrapur, on Mohol to Pandharpur public road and thus blocked the road. However, after discussion with the Assistant District Collector, Solapur, S.D.P.O. and the Tahasildar, the last rites on the body of deceased were performed. Thereafter, the Petitioners submitted their Representation to the Minority Commission, Mumbai who entered correspondence with the

District Collector, Solapur. In turn, District Collector gave a letter to the C.E.O. with direction to submit an 'Action Taken Report' within 10 days with a copy to the Petitioners. On getting copy of the said letter, the Petitioners along with Taluka Head of their organization met the Tahsildar, Mohol, who told that, his office is overburdened with administrative work and requested the Petitioners to co-operate by giving an assurance that, the inquiry report will be submitted at the earliest.

4.4) Thereafter, the Petitioners again went to meet the Tahsildar on 12th July, 2011. At that time, they were told that, the inquiry was in progress. Thus, according to the Petitioners the Taluka Administration was avoiding to redress their grievance. However, the District Administration with the involvement of Tahsildar, Mohol was planning to organize a 'Poetry Meet' programme (काव्य सम्मेलन) on 16th July, 2011. Therefore, the Petitioners threatened that, in case the District Collector and Tahsildar would attend the 'Poetry Meet', they would obstruct their vehicle and demonstrate an agitation.

4.5) That, on 27th December 2010, between 17:45 hours to 20:05 hours, at Pokhrapur, the Petitioners along with their associates formed an unlawful assembly and blocked the public transport by putting the dead body of a Muslim woman on the public road as stated above and thus contravened the Orders thereby prohibiting assembling of people. Therefore, C.R.No.498/2010, under Sections 143 and 341 of the Indian

Penal Code and Section 135 of the Bombay Police Act was registered against the Petitioners with Mohol Police Station, Solapur on 28th December, 2010.

4.6) It was alleged that, in the backdrop of the Bombay bomb blast and '*Badeeraat*' observed by Muslim community, the Petitioners and their two associates were trying to create a hatred between Hindu and Muslim community by pushing the cause of burial ground. Thus, the Petitioners and their two associates were likely to commit a cognizable offence by blocking the vehicle of the District Collector and hence they have been arrested under Section 151(1) of Cr.P.C. Accordingly, the Petitioners and their associates were proceeded with under Section 107 of Cr.P.C. and caused to furnish a bond to maintain good behaviour of longer duration, under Section 116 (3) of Cr.P.C. Hence, Petition.

5) Learned Advocate for the Petitioners submitted that, a dispute was going on between the Government's Revenue Department and the minority people regarding allotment of a place for cremation of Muslim Community people. The existing burial ground was encroached by Mr. Chavhan and Mr. Shendge. However, the District Administration was not paying proper attention to the said dispute notwithstanding the Petitioners and their organization gave Representation to the Government and there were written directions in that regard from the higher authorities of the Government. Therefore, by the Representation dated 14th July, 2011 the

Petitioners only conveyed their intention to the Chief Minister, Maharashtra State and other authorities of the Government that, despite the minority community was facing problem in respect of the burial ground, the District Administration was planning to hold the 'Poetry Meet'. Hence, they would peacefully protest before the Collector for redressal of their grievance. However, on 15th July, 2011 suddenly the Respondent No.2 called the Petitioners at the Police Station and arrested them invoking Section 151(1) of Cr.P.C. and on the next day, filed the chapter case, which is illegal. Therefore, the Petition may be allowed and the reliefs may be granted as prayed.

6) Per contra, learned A.P.P. emphatically submitted that, the Representation dated 14th July, 2011 submitted by the Petitioners clearly shows that, the Petitioners were going to present their agitation in such a manner as it would have invited a cognizable offence and created severe law and order problem in the area. Therefore, the Respondent No.2 was duty bound to arrest the Petitioners and their two associates under Section 151(1) of Cr.P.C. to avoid the untoward incident and to proceed against them under Section 107 of Cr.P.C. As such, there is no substance in the Petition and the Petition may be dismissed.

7) In view of the rival submission, we have carefully scrutinized the Representation dated 14th July, 2011 submitted by the Petitioners. The said Representation clearly mentions that, on 27th December 2010, at about

10:00 a.m., when the dead body of the aged Muslim woman was not allowed to be cremated by the said two agriculturists in the alleged burial ground, at about 05:30 p.m., the Petitioners and their associates blocked the public road as stated above. The said act of the Petitioners and their associates had created a serious problem of law and order. Considering the entire facts and circumstances of the case, we are of the view that, the said act was not justifiable because by taking assistance of the police, the Petitioners could have peacefully performed the last rites on the dead body. However, instead of trying to avail said lawful remedy, the Petitioners and others took the law in their hand and blocked the public road.

8) The Petitioners were trying to commit the similar act by obstructing the vehicles of the Collector and Tahasildar to bring failure to the event of 'Poetry Meet' which was at the threshold *i.e.*, as scheduled on 16th July, 2011. It need not be mentioned that, such public events/programmes are organized for social bonding and at the cost of public exchequer. Therefore, the probable protest by the Petitioners and their associates was to spoil the peaceful situation in the village and to make the existing problem more complicated and worsened. This would have led to developing hatred among the two communities leading to clash. Thus, the Petitioners wanted to break the public peace and tranquility and thereby disturbing the even tempo of the society. As such, the action of Respondent No.2 *i.e.*, arresting the Petitioners under Section 151(1) of Cr.P.C. to prevent

them from committing a cognizable offence and to proceed against them under Section 107 of Cr.P.C. was absolutely justifiable and lawful.

9) In view thereof, there is no substance in the Petition. The Petition is liable to be dismissed and is accordingly dismissed.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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