

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1102 OF 2024

Sunil Shivaji Wagh

...Petitioner

Versus

The State Of Maharashtra And Anr.

...Respondents

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Mr. Anil Singh, Sr. Advocate a/w Mr. Aadesh Vyas, Ms. Ruchita Verma,
Ms. Nida Basade i/b Mr. Sandeep Kekane, Advocate for the Petitioner.

Mrs. M.M.Deshmukh, Addl.APP for the Respondent – State.

Mr. Pravin Ghadge, API, Worli Police Station, Mumbai.

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CORAM	:	PRAKASH D. NAIK, &
	:	N. R. BORKAR, JJ.
DATE	:	23rd APRIL, 2024.

P.C.:

1. Heard both the sides.
2. The Petitioner has invoked under Section 482 of the Code of Criminal Procedure, 1973 challenging the charge-sheet arising out of First Information Report dated 17th March, 2023 registered with Worli Police Station vide CR No.0187 of 2023 registered for offences under Sections 353, 506, 509 of the Indian Penal Code. (“IPC”).
3. The prosecution case is as under:-
 - (i) On 15/03/2023 one person has parked motorcar in no

parking zone and he was standing near the car. To avoid any obstructions for the traffic, he was informed by the complainant to remove the vehicle. The area contains the Government Offices and Residences of MLA's and MP's. The persons standing near the vehicle, however, questioned the complainant and shouted at her. The complainant told him to move the vehicle and she left the place.

(ii) On 16/03/2023, the complainant was on traffic duty for the area from Omble Chawk to Traffic Head Office. She was in uniform. While she was on duty, the person, who had quarrel with her on the previous day came there and stood in front of her. He questioned her and told her to show duty chart. She was also informed that the duty is not in the said area nor it was in the previous day.

(iii) The complainant told him that she is on duty and it is her responsibility to manage the traffic and remove the vehicles parked in no parking area. While the people had gathered, the accused stated that, she must have come for recovery and whether she wants money. The accused charged at her. He kept on quarreling with her. Call was made to control room. Mobile van came there. The accused

threatened her that he is working in Mantralaya and she will have to face consequences. FIR was registered. On completing investigation charge sheet was filed.

4. Learned Senior Advocate Mr. Singh for the Petitioner submitted that no offence under Section 353 of IPC is made out. No offences under Sections 353, 506 and 509 are made out. The Petitioner is a public servant. He was discharging his duty. The complainant was not discharging her official duty. She was not posted at the place of incident for discharging duty. There was no criminal force or assault used against the complainant. She was not obstructed from performing duty. The duty chart of Respondent No. 2 show that she was posted for performing duty at another place. The place of Flora Junction that the alleged incident had occurred does not come within the area assigned to the complainant. She is assigned the duty at Ombale Chowk which is far away from the place of incident. She was not carrying body worn camera.

5. Learned APP submitted that prima facie case is made out against the accused. The complainant was discharging her duty. The accused charged at her. She was threatened and abused. She was obstructed in performing her duty. At this stage the defence of

accused cannot be considered.

6. During the course of the hearing of the application, it is disclosed that there was a video recording of the incidents which refers to quarrel between the complainant and the accused. However, apparently there is no evidence to show that the accused had used any criminal force or assault or committed any act to deter the public servant from discharging her duty.

7. The charge sheet does not satisfy the requirements of the offences alleged therein. To constitute the offence under Section 353 IPC, there has to be assault or criminal force to deter public servant from discharge of duty. There is no cogent evidence, prima facie, to substantiate the said offences and the impugned proceeding are required to be quashed.

ORDER

(i) Criminal Writ Petition No. 1102 of 2024 is allowed.

(ii) The charge sheet arising out of First Information Report dated 17th March, 2023 registered with Worli Police Station, vide CR No. 187 of 2023 is quashed and set aside.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)