

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2898 OF 2019**

Vivekanand D. Gupta ... Petitioner
Versus
The State of Maharashtra and anr. ... Respondents

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Mr. Niteen Pradhan i/b Shubhada D. Khot a/w Danish Patel a/w Shambhavi Desai a/w Shruti Jagtap for the Petitioner.
Ms. M. M. Deshmukh, APP for the State.
Mr. J. More, PSI, Andheri Police Station, Mumbai.

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**CORAM : PRAKASH D. NAIK &
N.R. BORKAR, JJ.**

DATED : 03.04.2024

P.C. :-

Petitioner has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India and inherent powers under Section 482 of Cr.P.C. and to challenge FIR dated 04.03.2019 registered with Andheri Police Station vide Crime No. 114 of 2019 for offences under Sections 353, 504, 506 of the Indian Penal Code.

2. The brief allegations as spelt out in the FIR are as follows:

(I) The first informant is the Assistant Police Inspector attached to traffic division.

(II) On 04.03.2019, he was on duty at Western Express

Highway, Andheri East near Bisleri Junction. At that time a tourist travel vehicle was stationed on the road and the passengers were boarding. The accused came there and told the first informant whether he can't see the vehicle parked on the road. The accused also said that the complainant is allowing vehicles to stand on road by corrupt means and he would get him suspended.

(III) The first informant told the accused to leave the place as he is busy in discharging his duty. The accused charged at him and abused him. He also told complainant that he is an Advocate and belongs to political party.

(IV) The first informant approached the police station and lodged the complaint.

3. Learned Advocate Mr. Pradhan appearing for the petitioner submitted that assuming the allegations reflected in the FIR are considered to be true, the offence under Section 353 of IPC is not made out. The FIR indicates that the petitioner had infact requested the complainant to remove the tourist bus, which was illegally parked on the Highway. It was an illegal parking. The petitioner infact told the first informant to discharge his duty by directing driver of the vehicle to move

the vehicle from the spot. To constitute the offence under Section 353 of IPC, the perpetrator of crime should assault or use criminal force to any person being a public servant in the execution of his duty as such public servant. Plain reading of Section 353 of IPC shows that the person accused of the said offence should have assaulted the public servant or used criminal force with intent to prevent or deter the public servant from discharging his duty as such public servant. Section 353 of IPC cannot be applied if there is no assault or criminal force.

4. Mr. Pradhan has relied upon the decision of ***Manik Taneja Vs. State of Karnataka*** reported in ***(2015) 7 SCC 423*** and ***Chandrika Sao Vs. State of Bihar*** reported in ***2012 SCC Online Pat 478***.

5. Learned APP submitted that the FIR makes out the offence under Sections 353, 504, 506 of IPC. The complainant was discharging his duty, the petitioner/accused had obstructed the complainant from discharging his duty. All the ingredients to constitute the offence under Section 353 are made out in the FIR. Section 353 IPC contemplated assault or use of criminal force or to deter public servant from discharging duty. The present case would be covered by first as

well as second part of said provision. The accused had charged at complainant and thus used criminal force and obstructed him in discharging duty. During the course of investigation, statements of witnesses corroborate the version of the first informant.

6. Section 353 of IPC reads as follows:

“Assault or criminal force to deter public servant from discharge of his duty – Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.”

7. From the tenor of the FIR and the other material collected during the investigation, it is apparent that the accused had allegedly questioned the complainant as to why the vehicle, parked on the road could not be removed by him. There was exchange of words between them.

8. The contents of the FIR does not indicate that the petitioner has prevented or obstructed the complainant from

discharging duty, which is the essential ingredient to constitute the offence. The complainant was told that the vehicle be moved from the place, where it is parked. It does not appear that any criminal force was used by the accused or public servant was deterred from discharging his duty.

9. In the case of ***Manik Taneja Vs. State of Karnataka*** (supra), the Apex Court was dealing with judgment passed by the Karnataka High Court by which the petition for quashing the FIR was dismissed by the High Court on the ground that it was premature and it was filed before completion of investigation. The Apex Court observed that when the prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made, prima facie, establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue. Where, in the opinion of the Court, the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may quash the proceeding even though it

may be at a preliminary stage.

10. In the same decision, the Apex Court considered the applicability of Section 353 of IPC. It was observed that reading Section 353, it is apparent that the essential ingredients under Section 353 are that accused should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. The factual matrix of the said decision would indicate that the accused therein had posted the comment on the Facebook on the traffic police. The Apex Court observed that there is absolutely nothing on record to use criminal force to prevent the respondent from discharging his official duty. Taking uncontroverted allegations, the ingredients of the offence under Section 353 IPC are not made out.

11. Section 506 IPC prescribes punishment for the offence of criminal intimidation. 'Criminal Intimidation' is defined in Section 503 IPC. As per said provision, there must be an act of threatening another person with any injury to his, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person or to cause that person to do any act which he is not

legally bound to do or to omit to do any act which that person is legally entitled to do as the means of avoiding execution of such threat. The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. The material has to be placed on record to show that the intention is to cause alarm to the complainant.

12. Section 504 IPC relates to intentional insult with intent to provoke breach of peace. The facts of this case does not constitute this offence.

13. The statements of witnesses are recorded during the course of investigation. Apparently, the statements are ad verbatim the version of the complainant reflected in the FIR.

14. We do not find that FIR or material on record substantiate the charges levelled against the petitioner.

15. Considering the factual matrix of this case, we are inclined to quash the FIR in exercise of power under Section 226 of the Constitution of India and inherent powers under Section 482 of Cr.P.C. as the continuance of proceedings against the petitioner would be abuse of process of law.

ORDER

- (I) Writ Petition is allowed.
- (II) The FIR dated 04.03.2019 registered with Andheri Police Station vide Crime No. 114 of 2019 for offences under Sections 353, 504, 506 of the Indian Penal Code is quashed and set aside.

(N.R. BORKAR, J.)

(PRAKASH D. NAIK, J.)