

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

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CRIMINAL REVISION APPLICATION NO.346 OF 2024

Arjun Ramanjit Garewal

Age : 34 Years, Occu. : Business,
Residing at : 21, Sea Palace,
Juhu Tara Road, Juhu,
Mumbai : 400 049.

...Applicant

Versus

1. **The State of Maharashtra**
(Through BKC Police Station,
vide C.R. No.292 of 2017).

...Respondent No.1

2. **Eknath Vishnu Kesarkar**
Age : 64 Years, Occu. : Service,
14/A, 487, Tilak Vaishali Co-operative
Housing Society, Tilaknagar (West),
Chembur, Mumbai : 400 089.
Ricksha Driver, Address : Siddharth
Nagar, Mohol, Solapur.

...Respondent No.2
(First Informant)

Mr.Aditya Sawant a/w Mr.Rupesh Geete, Ms.Priya Dangat i/b. Satyaki Law Associates:-	Advocates for Applicant.
Mr.H.J.Dedhia:-	APP for Respondent No.1 -State.
Mr.Amit Utekar:-	Cyber Police Station – BKC : Crime Department, Kumbai.

CORAM : S. M. MODAK, J.

DATE : 24th JULY 2024

P.C. :-

1. Heard learned Advocate Shri.Sawant for the Applicant – Accused and learned APP Shri.Dedhia.
2. The Court of Additional Sessions Judge, Court Room No.23, Greater Mumbai, refused to discharge the Applicant as per the order dated **20th February 2024**. The offences are under Sections **353, 283** of the **Indian Penal Code, 1860**¹. The charge-sheet was filed by BKC Police Station in respect of an incident that took place on 26th September 2017 at about 12.25 hours in front of City Bank Bus Stop at Bharatnagar BKC Road. The incident has arisen on the background of parking of four wheeler car by the Applicant in front of the City Bank Bus Stop. It was causing obstruction to the traffic. That is why, the First-Informant questioned him who was deputed there to regulate the traffic. The Applicant questioned the authority of the First-Informant. The Applicant was asked about the documents. Again, he questioned the authority of the First-Informant. The First-Informant was about to take the Applicant along with the car to the Police Station and he sat in the car. The Applicant started recording it through mobile. The First-Informant gave an intimation to the control room. The Police already

¹ IPC

came there. Even, they tried to pacify the Applicant. The First-Informant has called the help of crane. The Applicant got frightened and he put the car on reverse mode. However, due to traffic, he could not do that. The First-Informant, somehow, came out of the car in question and then, with the help of the Police party, he took the Applicant along with the car to the Police Station and that is how, the FIR came to be lodged. The charge-sheet is also filed.

3. The Applicant has emphasised more on non-fulfillment of the ingredients of Sections 283 and 353 of IPC. About the incident, he has not clarified his version. It is but natural. So, the issue is, whether the statements reveal the fulfillment of those ingredients.

4. According to him, there has to be a '*criminal force*' or '*assault*' for the offence punishable under Section 353 of IPC. He relied upon the observations in case of *Manik Taneja and Another v/s. State of Karnataka and Another*². Unless and until, certain danger or damage is there, an offence under Section 283 cannot be made out. He relied upon the following two judgments:-

(i) *Aravind Saran v/s. The Inspector of Police, Kenikkarai*

² (2015) 7 Supreme Court Cases 423

*Police Station and Anr.*³

- (ii) *Sri Kurian Thomas and Ors. v/s. The Assistant Executive Engineer, Public Works Department and Anr.*⁴

5. Whereas, according to learned APP, the scope of an inquiry in a discharge Application is limited and a detailed *post mortem* cannot be conducted. On the issue of scope of an inquiry, he relied upon the observations in case of *Sheoraj Singh Ahlawat and Others v/s. State of Uttar Pradesh and Another*⁵ and more specifically, Para No.21.

6. It is true that if a '*criminal force*' is applied or if a public servant is assaulted in execution of his duty, then that is an offence under Section 353 of IPC. Earlier, the punishment was for two (2) years. Now, it is enhanced to five (5) years and the forum for trial is also changed. The word '*assault*' is defined in Section 351. There are two ingredients. One, there may be gesture or preparation and it will result into an apprehension in the mind of another person, it is said that '*assault*' is taken place. Whereas, a '*criminal force*' under Section 350, first of all, there has to be a '*force*' under Section 349 of IPC. If by that act, a motion of another person is changed or he is stopped then it is a

3 CrI.O.P.(MD)No.14008 of 2023 : Madras High Court (Bench at Madurai) : 10th August 2023

4 Criminal Petition No.6307 of 2013 : High Court Karnataka : 11th July 2018

5 (2013) 11 Supreme Court Cases 476

‘force’ and such ‘force’ becomes a ‘*criminal force*’ when it is intentionally used for commission of offence.

7. Whereas, when it is for an offence under Section 283 of IPC, there can be either ‘act’ or ‘omission’. Due to such an ‘act’ or ‘omission’, there must be some danger, obstruction or injury. It must be caused by person in any public way. It is true that even though the High Court of Karnataka in case of ***Sri Kurian Thomas*** (supra) in Para No.11 has used the word “*whether actual damage is caused or injury is caused, need to be investigated*”, still, the word ‘**damage**’ is not used in Section 283. In the said case, one road was constructed and it has resulted into a landslide on public road. As there was no ‘*damage*’ caused, the ingredients of Section 283 of IPC were not satisfied. The FIR was not quashed but it was observed that “*the matter needs to be investigated*”.

8. Learned Advocate Shri.Sawant has emphasised on the word used “परंतू पाठीमागील बाजुकडून येणा-या वाहनांचा ओघ अधिक असल्याने त्यास पळून जाता आले नाही. सदरच्या कृत्यामुळे त्याच्या पाठीमागून येणा-या वाहनांशी अपघात झाला असता....” from the FIR lodged by the First-Informant. According to Mr.Sawant, in fact, admittedly there was no damage caused to any public.

9. Whereas, in case of ***Aravind Saran*** (supra), there was a ‘*dharana*’

and it has caused an inconvenience to the citizens. The FIR was lodged involving an offence under Section 283 of IPC. The FIR was quashed for the reason that no one has complained about the obstruction caused in a public way due to that '*dharana*'.

10. Whereas, in case of ***Manik Taneja*** (cited supra), there was a news published on Facebook page alleging misbehaviour by the Police. The FIR was quashed for the reason that there was no '*assault*' or a '*criminal force*'. (Para No.10).

11. It is true that along with the charge-sheet, there are statements of number of Police personnel. Any private statements are not recorded. On the basis of instructions, learned APP submitted that it was heavy traffic road and the car drivers never stop and that is why, there is no statement. If we read Section 283 of IPC, by that act, there must be either '*danger obstruction*' or '*injury to any person*'. The word used is '*to any person in any public way*'. No doubt, all these Police personnel have said about obstruction to the public. Now, when they have observed on the basis of witnessing the act of parking of vehicle, whether it falls within a purview of Section 283 of IPC. **I do not think that the ingredients of Section 283 of IPC are made out.** The reason is,

there has to be a '*danger obstruction*' or '*injury to any person*'. Such '*any person*' cannot be the the Police officer. So, there has to be a statement of an independent person that due to the act of parking of vehicle, they were obstructed or they were put in danger or some injury is caused. Either '*danger*' or '*obstruction*' is sufficient. There need not be always an '*injury*' or there need not be always a '*danger*'. If it is an '*obstruction*', that is sufficient. **But, in this case, for the absence of any statement of a private person, it cannot be said that the ingredients of Section 283 of IPC are made out.**

12. It is true that the Court has to see the materials as it is at the time of framing of charge. Even if, those statements of Police personnel are read, they do not fit in the criteria of obstruction to any person. The word '*any person*' has to be interpreted as a person other than a person who is making a complaint that is, the Police Officer. Because, a Police Officer himself / herself cannot say that an '*obstruction*' is caused to a person other than him. Other persons must say that. This exercise can be done at the time of framing of charge, because the material required to frame a charge for Section 283 of IPC is absent. I do not agree with the decision of the trial Court.

13. So far as the offence under Section 353 of IPC is concerned, the observations in case of *Manik Taneja* (supra) will not be applicable, because in that case, there was only a Facebook news. In this case, the First-Informant was on Government duty and he was deputed to regulate the traffic. If, someone will park a vehicle at the middle of the road, it is his duty to inquire with him and if such person is non cooperative, he has got every right to take steps which are permissible by law. When the First-Informant sat in the car and called for help, the Applicant tried to put the car in a reverse mode, as a result, the other Police team jumped in front of the vehicle and tried to stop the vehicle driven by the Applicant. **So, it can certainly be said that a ‘criminal force’ is used.**

14. So, I do not think that case for discharge for an offence under Section 353 of IPC is made out. The Applicant can take this defence during the trial. So, I am not inclined to interfere in the order totally. The Revision Application has to be **allowed partly**. Hence, following order :-

ORDER

(i) The Revision Application is partly allowed.

- (ii) The Applicant - **Arjun Ramanjit Garewal** is **discharged** for the offence under **Section 283 of IPC**.
- (iii) That part of the order dated 20th February 2024 is set aside.
- (iv) Part of the order thereby directing **to frame a charge under Section 353 of IPC is confirmed**.

15. These are my *prima facie* observations. The learned trial Court need not be influenced by these observations.

16. All contentions are kept open.

17. In view of the above, Revision Application stands disposed of.

[S. M. MODAK, J.]