



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

35 CRIMINAL APPLICATION NO.811 OF 2024

1. Suraj S/o. Balaji Salunke
Age: 34 years Occu: Legal Profession
R/o. Khadgaon Road, Latur
Tq & Dist. Latur.
2. Ashish Vyankatrao Kokate
Age: 33 years Occu: Social Work
R/o. Chatrapati Nagar, Old Ausa Road,
Latur Tq & Dist. Latur.

.. Applicants

Versus

1. The State of Maharashtra
2. Santosh S/o Gulchand Panchal
Age: 32 Years, Occu: Bussiness
R/o. Sambhajinagar Khadgaon Latur,
Dist. Latur.

.. Respondents

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Mr. P. B. Jadhav and Ms. P P. Shinde, Advocate for Applicants.
Mr. G. A. Kulkarni, APP for Respondent No.1/State.
Mr. Madhav N. Kalyane h/f Mr. A. M. Reddy, Advocate for Respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 02 JULY 2025

ORDER :

. Present application has been filed initially for quashing the FIR vide Crime No.553 of 2023 dated 05.11.2023 registered with Shivajinagar Police Station, District Latur and later on, by way of amendment, for quashing the proceedings in Charge Sheet No.82 of

2024 pending before the learned Judicial Magistrate First Class, Latur for the offences punishable under Sections 294, 323, 504, 506 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. P. B. Jadhav for the applicants, learned APP Mr. G. A. Kulkarni for respondent No.1/State and learned Advocate Mr. Madhav N. Kalyane holding for learned Advocate Mr. A. M. Reddy for respondent No.2. In order to cut short, it can be said that all of them have made submissions in support of their respective contentions.

3. Perusal of the FIR would show that only the offence under Section 294 of Indian Penal Code is cognizable offence and the other offences are non cognizable and, therefore, we are required to consider as to whether the ingredients of Section 294 of Indian Penal Code are attracted from the facts of the case i.e. from the FIR and the material that has been collected during the investigation.

4. The informant says that around 4.00 p.m. on 05.11.2013 he was getting the advertisement boards installed of which he had taken the contract from Municipal Corporation Latur. The said work was going on on Ausa road. It is stated that at that time both the applicants came and started asking him as to how he was doing the said work and thereafter, the abuses were given which according to the prosecution are

amounting to obscene words. Thereafter, the informant was assaulted by slaps, fists and blows and threats were given that if he does not stop the work, he would be killed. As aforesaid, we are considering only Section 294 of Indian Penal Code, which reads thus :-

“294. Obscene acts and songs.- Whoever, to the annoyance of others-

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.”

Further we would like to rely on the decision in ***Pawan Kumar v. State of Haryana, (1996) 4 SCC 17***, wherein it has been held that “in order to secure a conviction, the provisions of Section 294, I.P.Code require two particulars to be proved by the prosecution, namely: (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene song or word in or near any public place; and (ii) has so caused annoyance to others. If the act is not obscene, or is not done in any public place, or the song recited or uttered in or near any public place or that it causes no annoyance to others, no offence is committed.” Though it is stated that these ingredients are for securing conviction, yet we take it further so that even for taking cognizance, those ingredients will have to be *prima facie* shown. Now, as regards

the abuses those have been quoted in order to say that they are the obscene words, we will have to then consider what is obscene. The word obscene has not been defined under I.P. Code, but we would then like to rely on the decision in ***Aveek Sarkar and another v. State of West Bengal and others, [AIR 2014 SC 1495]*** wherein it is held by the Hon'ble Supreme Court that word "obscene" will have to be then considered as an act or using of the word, which is affecting the furious feelings of the public. For the sake of arguments, for a while, if in the present case, the words those have been used are considered as obscene, yet then further ingredients will have to be then shown by the prosecution that it has caused annoyance to others. The charge-sheet would show that statements of witnesses Somesh Malge, Akash Budrupe and Pankaj Chavan have been recorded, who states that they were present when the obscene words were uttered and they say that after utterances of those words and giving threats, the applicants went away from that place. These witnesses do not say that they got annoyed with the act of the applicants. Therefore, one of the basic ingredients of Section 294 of Indian Penal Code are not getting attracted taking into consideration the contents of the FIR and the charge-sheet and, therefore, it would be an abuse of process of law, if the applicants are asked to face the trial. Case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure. Hence, the following

order :-

ORDER

- I) Criminal Application stands allowed.
- II) The FIR vide Crime No.553 of 2023 dated 05.11.2023 registered with Shivajinagar Police Station, District Latur and the proceedings in Charge Sheet No.82 of 2024 pending before the learned Judicial Magistrate First Class, Latur for the offences punishable under Sections 294, 323, 504, 506 read with Section 34 of Indian Penal Code, stand quashed and set aside as against the present applicants viz.(i) **Suraj s/o Balaji Salunke** and (ii) **Ashish Vyankatrao Kokate.**

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm