



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

36 CRIMINAL APPLICATION NO. 862 OF 2022

1. Kamlesh s/o Govindram Katariya
Age: 39 yrs. occu. Business
R/o. 'Saijraj Niwas', Shastri Nagar
Sillod, Tal. Sillod, Dist Aurangabad
2. Mahesh s/o Shankarlal Shankarpelli
Age: 42 yrs. Occu. Agri
R/o. Ma Durga Niwas
Near Vitthal Rukhmai Temple
Shastri Nagar, Sillod. Tal. Sillod
Dist. Aurangabad.
3. Amol s/o Ashokrao Dhakare
Age: 32 yrs. Occu. Business
R/o. Jai Bhavani Nagar,
Sillod, Tal. Sillod,
Dist. Aurangabad,

... Applicants
(Org. accused)

Versus

1. The State of Maharashtra
Through Police Inspector
Sillod City Police Station
Tq. Sillod, Dist. Aurangabad
2. Arjun s/o. Baburao Gade
Age: 45 yrs, occu. Business & Agri.
At present Chairman of Agriculture Produce
Market Committee, Sillod,
R/o. Kotnandra, Tal. Sillod,
Dist. Aurangabad.

... Respondents
(Resp. No.2 org. informant)

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Mr. Angad L. Kanade, Advocate for Applicants.

Mr. A. R. Kale, APP for Respondent / State.

Mr. S. S. Thombre, Advocate for Respondent No.2.

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

DATE : 27th January, 2025.

Per Court:

. Present application has been filed under Section 482 of the Code of Criminal Procedure for quashing the proceedings in S.C.C. No.189 of 2021, pending before the learned Judicial Magistrate First Class, Sillod, Taluka Sillod, District Aurangabad, arising out of FIR vide C.R. No.28 of 2021, dated 13th February, 2021, registered with Sillod City Police Station, District Aurangabad, for the offence punishable under Sections 294, 500 and 504 read with 34 of the Indian Penal Code.

2 Heard the learned counsel for the applicants, the learned APP and the learned counsel for respondent No.2. In order to cut short, we would like to say that they all have argued strongly supporting their respective contentions.

3 Respondent No.2 lodged the FIR on 13th February, 2021 around 21:24 hours for the alleged incident dated 12th February, 2021. The informant / respondent No.2 states that he is the Sabhapati of Krushi Utpanna Bazar Samiti, Sillod since one and ½ years prior to the FIR and he is a party worker of a political party. He says that there

was an agitation by another political party against the administration of Nagar Parishad, Sillod around 01:00 p.m. on 12th February, 2021 in Dr. Babasaheb Ambedkar Chowk at Sillod. According to him, the then Minister Mr. Abdul Sattar had no concern with the problems, which were raised in the agitation. Yet, the applicants had used abusive language, gave speech, raised slogans so as to defame the then Minister Mr. Abdul Sattar. A video was prepared by applicant Nos.2 and 3 and it was circulated on the social media so as to defame the then Minister. Because of the said act, the sentiments of the party workers and supporters of the then Minister have been hurt.

4 Statements of those party workers, whose sentiments were alleged to have been hurt, have been recorded under Section 161 of the Cr.P.C. and the charge-sheet has been filed for the offence punishable under Sections 294, 500 and 504 read with 34 of the IPC.

5 Perusal of the FIR as well as the statements of those party workers is totally silent as to what were the obscene acts or songs or the words uttered by applicant No.1. What was the speech that was given. What were the slogans, those were uttered. All these details are not given. The investigating officer has not tried to get the video, which was allegedly circulated in the social media. Therefore, except the bare statement, there is nothing in the charge-sheet. Here, only

Section 294 of the IPC is the cognizable offence.

6 We would like to rely upon the decision in ***Pawan Kumar Vs. State of Haryana and another***, reported in, ***1996 (4) SCC 17***, wherein it has been held as under:-

“In order to secure a conviction the provision requires two particulars to be proved by the prosecution, i.e. (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed.”

7 Here, as aforesaid, mere use of the word ‘*Ashleel Bhasha*’ the act or the word will not become obscene as contemplated under Section 294 of the IPC. Those words ought to have been given in the FIR and/or in the statements of witnesses recorded under Section 161 of the Cr.P.C.. Causing hurt to the feelings of the supporters will not amount to annoyance. Therefore, the ingredients of the offence punishable under Section 294 of the IPC are not at all made out.

8 As regards Section 504 of the IPC is concerned, the prosecution should prove that the accused persons had intentionally insulted and thereby gave provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence. Here, again we would like to say that hurting the feelings of supporters will not amount to insult and then giving provocation, which would likely to cause breaking of public peace. Another aspect is that, from the contents of the FIR as well as the statements of witnesses recorded under Section 161 of the Cr.P.C. would show that the then Minister was not present at the place where the alleged incident had taken place.

9 As regards Section 500 of the IPC is concerned, the prosecution should prove that there was offence described in Section 499 of the IPC i.e. defamation and even if we take it that the alleged act on the part of the applicants amounted to defamation, yet there is hurdle of Section 199 of the Cr.P.C. Section 199 of Cr.P.C. prescribes that no Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code, except upon a complaint made by some person aggrieved by the offence. Therefore, when the ingredients of the offence punishable under Sections 294 and 504 read with 34 of the IPC are not made out, then for Section 500 of the IPC, there is the said hurdle under Section 199 of the Cr.P.C. Therefore,

this is a fit case where we should exercise our inherent powers under Section 482 of the Cr.P.C. for quashing the proceedings. Hence, the following order is passed:-

ORDER

- I. The application stands allowed.
- II. The proceedings in S.C.C. No.189 of 2021, pending before the learned Judicial Magistrate First Class, Sillod, Taluka Sillod, District Aurangabad, arising out of FIR vide C.R. No.28 of 2021, dated 13th February, 2021, registered with Sillod City Police Station, District Aurangabad, for the offence punishable under Sections 294, 500 and 504 read with 34 of the Indian Penal Code, stands quashed and set aside as against all the applicants.

[SANJAY A. DESHMUKH, J.] [SMT. VIBHA KANKANWADI, J.]

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