



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1945 OF 2024

Swararaj @ Raj Shrikant Thackeray

.. Applicant

Versus

1. The State of Maharashtra
Through the Senior Inspector
of Police, Parali Gramin
Police Station, District Beed.
2. Shankar Sheshrao Panchal
Age: 54 years, Occu.: S.T, Driver
R/o. Gangakhed Depot, Tal. Gangakhed
Dist. Parbhani.

.. Respondents

...

Mr. Rajendra A. Shirodkar, Senior Advocate i/b Mr. A. S. Shejwal, Advocate for the applicant.

Mr. G. A. Kulkarni, APP for respondent No.1/State.

Mr. N. B. Narwade, Advocate for respondent No.2 (Appointed).

...

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

DATE : 21 MARCH 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed for quashing the proceedings in R.C.C. No.38 of 2009 pending before the learned Judicial Magistrate First Class, Parali Vaijinath, District Beed arising out of FIR vide Crime No.217 of 2008 registered with Police Station, Parali Vaijinath (Rural),

District Beed for the offence punishable under Sections 143, 427, 336, 109 of Indian Penal Code and under Section 3, 4 of the Prevention of Damage to the Public Property Act and under Section 135 of the Bombay Police Act.

2. Heard learned Advocate Mr. Rajendra A. Shirodkar, Senior Advocate instructed by Mr. A. S. Shejwal for the applicant, learned APP Mr. G. A. Kulkarni for respondent No.1/State and learned Advocate Mr. N. B. Narwade, who is appointed to represent the cause of respondent No.2.

3. Learned Advocate for the applicant submits that the applicant is the President of political party by name Maharashtra Navnirman Sena, whose main office is at Mumbai. As per the prosecution story, the applicant was not present when the alleged incident had taken place. Informant/respondent No.2 is the bus driver of S.T. Bus bearing No.MH-20-D-5371. The said bus was on the route of Parali – Gangakhed and around 10.20 a.m. on 22.10.2008, the bus had reached T-Junction of Dharmapuri. Then an Indica car bearing No.MH-44-B-5555 came in front of bus. Five to six persons alighted from the car and pelted stones on the front glass of the bus. Those unknown persons were shouting slogans “राज ठाकरे जिंदाबाद”. After damaging the bus, those unknown persons fled away. It is stated that the said act was the result of the provocative

speech by the applicant or at the instigation by the applicant.

4. Learned Advocate for the applicant further submits that the applicant had filed application for discharge Exhibit-39 before the learned Magistrate, however, that came to be rejected on 10.10.2017. The applicant could not challenge the order before the Sessions Court by way of revision, as there was miscommunication between the applicant and his Advocate, who was representing him before the learned Magistrate. The application for dispensing attendance of the applicant has been rejected by the learned Judicial Magistrate First Class, yet certainly this is a case where this Court can exercise its powers under Section 482 of the Code of Criminal Procedure, as there is absolutely no evidence against the applicant. In similar circumstances, this Court in ***Criminal Application No.4770 of 2015 decided on 30.10.2015*** and ***Criminal Application No.4769 of 2015*** decided on the same day had quashed and set aside the charge-sheets in similar matters. Further, in ***Criminal Application No.4404 of 2009*** decided on 03.12.2018, R.C.C. No.13 of 2009 was quashed and set aside. In ***Criminal Writ Petition No.299 of 2024*** decided on 18.04.2024, the discharge application was rejected by the learned Judicial Magistrate First Class and that order was confirmed by the learned Additional Sessions Judge, Paranda, District Osmanabad and the writ challenging

those orders was allowed and the petitioner was discharged. The facts in all these cases are similar. The applicant was not present at the spot and there was no such evidence on record which would show that the present applicant had ever instigated the accused persons, who have pelted stones and caused damage to the public property and therefore, now it would be unjust to ask the applicant to face the trial.

5. Per contra, learned APP and learned Advocate Mr. N. B. Narwade, who is appointed to represent the cause of respondent No.2, object to the application and submit that the present application has been filed at a very belated stage when the applicant had exhausted his remedy and he had not challenged the order on discharge application. He is approaching this Court at a belated stage.

6. No doubt, there is a delay on the part of the applicant to approach this Court, however, that cannot be the only ground on which this Court should not exercise its powers under Section 482 of the Code of Criminal Procedure. Perusal of the entire charge-sheet would show that the present applicant was not member of unlawful assembly. He had not pelted stones on the bus causing mischief or damage to the public property. It appears that the incident had taken place somewhere around 21.10.2008, 22.10.2008 and it appears that the co-accused are the members of the political party of which the present applicant is the

President. This Court in earlier orders had taken note that the applicant has been made as an accused only because it is alleged that the applicant had made a speech somewhere else and because of that speech, his party workers/followers got excited and then they have committed the offence. Now, the prosecution against the applicant appears to be limited to Section 109 of Indian Penal Code. Actual mischief or damage to the public property cannot be on the basis of abetment, because in the speech there could not have been a specific direction to the party workers or followers that they should go and cause damage to the public property. The charge-sheet also does not contain that such statement was ever made by the present applicant and, therefore, it would be an abuse of process of law if the applicant is asked to face the trial. Hence, the following order :-

ORDER

- I) Criminal Application stands allowed.
- II) The proceedings in R.C.C. No.38 of 2009 pending before the learned Judicial Magistrate First Class, Parali Vaijinath, District Beed arising out of FIR vide Crime No.217 of 2008 registered with Police Station, Parali Vaijinath (Rural), District Beed for the offence punishable under Sections 143, 427, 336, 109 of Indian Penal

Code and under Section 3, 4 of the Prevention of Damage to the Public Property Act and under Section 135 of the Bombay Police Act, stands quashed and set aside as against the present applicant.

III) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.7,000/- to be paid by the High Court Legal Service Sub Committee, Aurangabad.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm