



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1954 OF 2024

Ramrao Yashwantrao Mane
Age: 44 years, Occu.: Agriculture
and Business,
R/o. Pimpri (Bk.), Tq. Parali,
District Beed.

.. Applicant

Versus

1. The State of Maharashtra
Through Officer Incharge,
Police Station Majalgaon (Rural),
District Beed.
2. Rahul Dnyanoba Salve
Age:35 years, Occu.: Agriculture,
R/o. Rajegaon, Tq. Majalgaon,
District Beed.

.. Respondents

...
Mr. S. J. Salunke, Advocate for the applicant.
Mr. A. R. Kale, APP for respondent No.1/State.
Mr. S. A. Wakle, Advocate for respondent No.2.
...

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

DATE : 13 MARCH 2025

ORDER :

. Present application has been filed by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure initially for quashing the FIR bearing Crime No.17 of 2024 dated 29.01.2024 registered with Majalgaon (Rural) Police Station, District

Beed and later on, by way of amendment, for quashing the proceedings in Regular Criminal Case No.170 of 2024 pending before the learned Judicial Magistrate First Class, Majalgaon for the offence punishable under Section 295-A of Indian Penal Code.

2. Heard learned Advocate Mr. S. J. Salunke for the applicant, learned APP Mr. A. R. Kale for respondent No.1/State and learned Advocate Mr. S. A. Wakle for respondent No.2.

3. Learned Advocate for the applicant has taken us through the entire charge-sheet including the FIR and submits that even if the contents are taken as it is, it cannot be stated that there was an intention on the part of the applicant for outraging the religious feelings of any class. He relies on the decisions in ***Ramji Lal Modi Vs. State of U.P., [AIR 1957 SC 620]*** and ***Mahendra Singh Dhoni Vs. Yerraguntla Shyamsunder, [AIR 2017 SC 2392]***, wherein it has been held that Section 295-A does not stipulate everything to be penalise and every act would tantamount to insult or attempt to insult the religion or religious feelings of the class of citizens. After the flag hoisting in the matter, the applicant told that the photo of Dr. Babasaheb Ambedkar should be kept in the office, which appears to have not been liked by the informant/respondent No.2 and it is stated that he had asked the applicant as to why he had removed the said photo and thereupon, it is

stated that the present applicant had arrogantly stated that there are more than hundred great personalities, then whose photograph should be kept. This will not amount to outraging of religious feelings. He further relies on the decision in ***Manoj Rai and Others Vs. State of M.P., [AIR 1999 SC 300]***, wherein it is held that when there is no sanction given in accordance with Section 196(1) of the Code of Criminal Procedure to prosecute accused for the offence under Section 295-A of Indian Penal Code, such criminal proceedings needs to be quashed. He then relies on the Division Bench decision of this Court in ***Pramod Udeybhhan Shendre Vs. The State of Maharashtra and another, [Criminal Application (APL) No.1077 of 2023 with companion matter]*** decided at Nagpur Bench to which **[Smt. Vibha Kankanwadi, J.]** is party, wherein similarly when there was no sanction of the State Government, the Court had quashed the proceedings. It is then submitted that there was correspondence made by the investigating officer to the Collector for according sanction, so also even Superintendent of Police, Beed had given such kind of letter to the Collector, Beed for according sanction, yet the sanction was not granted and the concerned Magistrate took cognizance of the offence on 18.07.2024 without considering the point of sanction involved in Section 196(1) of the Code of Criminal Procedure.

4. Learned APP strongly opposes the application and submits that since the cognizance has been taken after filing of the charge-sheet, let

there be trial.

5. Even without going to the facts of the matter, it can be seen that learned Magistrate had failed to consider the provisions of Section 196(1) of the Code of Criminal Procedure. We reproduce the relevant provision for further reference :-

“196. Prosecution for offences against the State and for criminal conspiracy to commit such offence. — (1) No Court shall take cognizance of —

(a) any offence punishable under Chapter VI or under section 153A, [section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860),

except with the previous sanction of the Central Government or of the State Government.”

Thus, it is very much clear that there is bar to take cognizance of the offence by a Court in respect of a case wherein offence under Section 295-A of Indian Penal Code is involved unless there is a previous sanction of the Central Government or the State Government. Here, perusal of the entire charge-sheet would show that there was no sanction to prosecute the applicant for the alleged offence under Section

295-A of Indian Penal Code by the State Government. We may also observe that taking into consideration the provisions of Section 196(1A) of the Code of Criminal Procedure, there can be a sanction by the District Magistrate in a case where offence punishable under Section 153-B or sub-section (2) or sub-section (3) of Section 505 of Indian Penal Code is involved or a criminal conspiracy to commit such offence is involved. But the legislature has not intended to give the jurisdiction to accord sanction under Section 196(1) of the Code of Criminal Procedure to the District Magistrate and therefore, word "District Magistrate" is not appearing in the said Section. Therefore, those communications by investigating officer as well as Superintendent of Police, Beed to Collector/District Magistrate, Beed are of no use to the prosecution. When there is specific bar to take cognizance, yet in the present matter cognizance has been taken by the learned Magistrate on 18.07.2024. Such illegal order cannot be allowed to sustain. Certainly, the ratio laid down in ***Ramji Lal Modi (Supra)*** and ***Mahendra Singh Dhoni (Supra)*** are required to be considered. They were referred in ***Pramod Udeyghan Shendre (Supra)*** and this Court has observed taking into consideration the decision of the Division Bench of the Hon'ble Gujarat High Court in ***Shalibhadra Shah Vs. Swami Krishna Bharati, [1981 Cri. L. J. 113]*** that the offences enumerated in Section 196(1) of the Code of Criminal Procedure in respect of which prior sanction has been made mandatory,

deal with matters related to public peace and tranquility with which the State Government is concerned. Those offences are of serious and exceptional nature. It is, therefore, provided that previous sanction of the Government shall be required so that prosecutions which may by themselves generate class feelings can be avoided. It was therefore observed that in other words, obtaining of a sanction of concerned Government is a *sine qua non* and no Magistrate can take cognizance of the complaint / FIR / charge-sheet, unless sanction order is produced.

6. Even on merits then it will have to be observed that from the contents of the FIR as well as the statements of witnesses, it can be seen that only for the purpose of flag hoisting, the photographs of great personalities like Mahatma Gandhi, Bhagat Singh, Dr. Babasaheb Ambedkar were kept near the place of flag hoisting and thereafter, it is stated to be seen by the informant that applicant told the staff that they should take photograph of Dr. Babasaheb Ambedkar and keep it in the office. He does not say as to what was done with the photos of Mahatma Gandhi and Bhagat Singh. He has not come with the case that the photo of Dr. Babasaheb Ambedkar was kept in office in such a position which was not honourable. Further, it also appears that at the place of flag hoisting, the said photograph was kept on a chair, that means it would have been taken out from some place where it was earlier and then kept on the chair in the ground near the flag hoisting. If that photo is kept at

its usual place, then it cannot be said that there was any ill intention or *mala fide* intention or it is done with deliberate act in order to outrage the religious feelings of a class. Since the ingredients of the offence are not made out as well as importantly the sanction was not obtained to prosecute, the proceedings deserve to be quashed and set aside. Hence, the following order :-

ORDER

- I) Criminal Application stands allowed.

- II) The FIR bearing Crime No.17 of 2024 dated 29.01.2024 registered with Majalgaon (Rural) Police Station, District Beed as well as the proceedings in Regular Criminal Case No.170 of 2024 pending before the learned Judicial Magistrate First Class, Majalgaon for the offence punishable under Section 295-A of Indian Penal Code, stand quashed and set aside as against the present applicant.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm