



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 2542 OF 2025**

SUDHIR VACHIST GULBHILE
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. Arun G. Pawar h/f Mr. Rahul Rajiv Deshmukh, Advocate for Applicant.

Mr. P. S. Patil, Addl. PP for Respondents-State.

...

**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.
DATED : 18th AUGUST, 2025.**

P.C.

1. The present application has been filed under Section 482 of the Criminal Procedure Code, 1973 for quashment of the proceedings in Regular Criminal Case No.105/2025 pending before learned Judicial Magistrate First Class, Kaij, Dist. Beed arising out of First Information Report vide Crime No.141/2024 dated 13.06.2024 registered with Yusuf Wadgaon Police Station, Taluka Kaij, District Beed, for the offences punishable under Section 505(2) of Indian Penal Code, 1860.

2. Heard learned Advocate Mr. Pawar holding for learned Advocate Mr. Deshmukh for applicant and learned Addl. PP Mr. Patil for respondent-State.

3. In order to cut short it can be stated that both sides have made submissions in support of their respective contentions. In present case, FIR has been lodged by Police Constable Yogesh

Keshavrao Samudre attached to Yusuf Wadgaon Police Station and, therefore, there was no necessity for him to be included as party/respondent separately.

4. In FIR it has been alleged that secrete information was received that after Lok Sabha Election various objectionable posts and comments were posted in respect of caste and religion within Beed District. The atmosphere that was intended to be created was not conducive to social life. Even at Wadwani, Shirur-Kasar, Beed and Parli when such objectionable posts were made or created, persons from different community had raised agitation. He received some screenshot from some secrete informant on WhatsApp at 10.00 am on 13.06.2024. When he saw screenshot, it was on group by name 'आम्ही दिपेवडगाकर'. He has then noted that one Sudhir Gulbhile, a member of the said group, had posted a post regarding the number of persons in the village belonging to the Vanjari community, stating that he would give his vote to a particular political party and that if anybody had any objection, they should contact him. He is then in a way invited by saying that 'always welcome anytime anywhere'. All these statements were stated to be on the next day of result of Lok Sabha Election. The informant then says that if this post is considered, then that would create hatred amongst Vanjari community of village and, therefore, said FIR was lodged alleging that present applicant has

committed offence punishable under Section 505(2) of Indian Penal Code.

5. The charge-sheet would show that from the accused, mobile phone has been seized and then there are statements of witnesses, who are members of said WhatsApp group. All of them have stated that the present applicant had posted the said post. There is statement of one Shyam Gulbhile, who claims that he is Admin of said group, but his statement does not show that immediately after said post whether he has taken any action for deleting message, so that other members should not see the same.

6. Even if for the sake of argument it is accepted that present applicant had posted the said post and contents of charge-sheet including FIR are attracted ingredients of Section 505(2) of the Indian Penal Code, next question then arises as to whether sanction as required under Section 196(1-A)(a) of Criminal Procedure Code was obtained or not and was placed before learned Magistrate alongwith charge-sheet or even thereafter before cognizance was taken. By our order dated 29.07.2025 after taking note of the fact that Fehrist (list of documents) alongwith charge-sheet does not show sanction and when it appeared that summons has been issued to applicant, that means cognizance has been taken by learned Magistrate; before taking further steps we called upon learned Judicial Magistrate First Class, Taluka Kaij, District

Beed before whom RCC No.105/2025 is pending to submit report as to when the charge-sheet was presented on 15.04.2025, there was such sanction order as contemplated under Section 196(1)(a) of Criminal Procedure Code or it was filed between 15.04.2025 to 22.04.2025 i.e. before he took cognizance of matter. Now report has been received from concerned learned Magistrate stating that no such sanction was produced alongwith charge-sheet nor it was filed between 15.04.2025 to 22.04.2025. However, the concerned Court has taken cognizance of offence under Section 505(2) of Indian Penal Code on 22.04.2025.

7. The learned APP is also producing written instruction from concerned Police Station. They are taken on record by marking Exhibit 'X' for identification, wherein even police have accepted that no such sanction was ever taken.

8. Time and again, this Court in various matters in past has clarified and brought the provisions to the note of the learned Magistrates, still at the ground level things are not going in proper directions. Fortunately or unfortunately, the learned Magistrate who had passed the order of taking cognizance on 22.04.2025 was transferred in the Annual General Transfers, and the Magistrate who has submitted the report today took over the charge in June 2025.

9. Section 196(1-A)(a) of Criminal Procedure Code provides that
“No Court shall take cognizance of –

- (a) any offence punishable under sections 153-B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code, or
- (b) a criminal conspiracy to commit such offence, ----

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

10. This sanction is not an empty formality. While granting such previous sanction, there has to be an application of mind by Competent Authority taking into consideration the facts. This sanction is necessary since the State is duty bound to maintain harmony in society among persons of different castes, creeds and religions. When any group or religion is attacked by such an act, sanction is required not only to proceed against the person against whom such allegations are made, but also to safeguard the concerned person, caste, or religion. The said Section creates statutory bar for Magistrate for taking cognizance of said offence. Of course, it does not prohibit filing of charge-sheet without such sanction, but before cognizance is taken the investigating agency will have breathing time to get such sanction. When there is statutory bar, Magistrate is duty bound to consider all documents especially whether such sanction as contemplated under provisions of Act or Code is placed on record or not. The Magistrate may

refuse to take cognizance of offence, if such sanction is not obtained or may by postponing matter ask Investigating officer to clarify situation.

11. Here no precaution appears to have been taken by learned Magistrate before passing order of issuing process i.e. taking cognizance. The Magistrate failed to see that sanction order as contemplated under Section 196(1-A)(a) of the Criminal Procedure Code is not annexed with charge-sheet. Now, police have clarified that no steps has also been taken. Thus, when cognizance has been taken inspite of Bar of statutory sanction or provision, then it would be an abuse of process of law to ask applicant to face trial and, therefore, we are of the opinion that case is made out for exercise of powers under Section 482 of Criminal Procedure Code. Hence, we proceed to pass the following order.

ORDER

- a. The Criminal Application stands allowed.
- b. The proceedings in Regular Criminal Case No.105/2025 pending before learned Judicial Magistrate First Class, Kaij, Dist. Beed arising out of First Information Report vide Crime No.141/2024 dated 13.06.2024 registered with Yusuf Wadgaon Police Station, Taluka Kaij, District Beed, for the offence punishable under Section 505(2) of the Indian Penal Code, 1860, stands quashed and set aside as against the present applicant.

c. The learned Registrar (Judicial) of this Court is directed to circulate this order to all the Courts in Maharashtra.

(SANJAY A. DESHMUKH)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Devendra/August-2025