



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3725 OF 2024

Ramesh Gopal Lingayat And Others
VERSUS
The State Of Maharashtra And Another

Mr. P. P. Patni a/w Mr. Ram Malani h/f Mr. A. S. Bajaj, Advocate for
Applicants
Ms. R. P. Gour, APP for Respondent No.1/State

**CORAM : Smt. Vibha Kankanwadi &
Hiten S. Venegavkar, JJ.**

DATE : 03rd September, 2025

PER COURT :-

1. Present application has been filed invoking inherent powers of this Court for quashment of proceedings in SCC No. 11355/2021 pending before learned Judicial Magistrate First Class, Aurangabad arising out of FIR vide Crime No. 520/2021 registered with City Chowk Police Station, District Aurangabad on 18.10.2021 for the offences punishable under Sections 294, 323, 504, 506 read with section 34 of Indian Penal Code (for short “**I.P.C**”)
2. Heard learned Advocate Mr. P. P. Patni along with Mr. Ram Malani for the applicants and learned APP for respondent No. 1. Though respondent No. 2-informant was duly served failed to appear.

3. Learned Advocate for the applicants has taken us through the entire charge sheet including the FIR and submits that perusal of the FIR would show that there was a dispute in respect of the space where the informant was allegedly selling articles in the market. She was not even knowing the names of applicant Nos. 3 and 4 yet she has involved them also. Now it is stated by her that applicant No. 1 by using obscene words had abused her and thereafter she was assaulted by hands made to lie on ground and assaulted with kicks and fists in her stomach. She states that she was rescued by her two sons Rohit and Dipak and then it is stated that the applicants had threatened her. If we consider these allegations, the basic ingredients of the offence under Section 294 of I.P.C are not getting attracted and the other offences are non cognizable in nature. The charge sheet would show that there are statements of interested witnesses only i.e., the husband, two sons and son-in-law of the informant. In such circumstance, it would be an abuse of process of law, if the applicants are asked to face the trial.

4. Learned APP opposes the application and submits that the informant who is lady, has been abused by using obscene language. Though, it is stated that the witnesses are the relatives yet the incident is taken place in the market area that too at the time of Diwali and, therefore, there would have been a rush in the market. In such circumstance, there is scope to believe that it

could have cause the public annoyance. Further the ingredients of the offence under Section 509 of I.P.C. which is also cognizable offence would get attracted taking into consideration the use of obscene words. Since the charge sheet has been filed, let there be trial.

5. At the outset, it is to be noted that the incident is alleged to have taken place at 08:30 PM on 16.10.2021 in front of Gattani Building in Gulmandi Parking area. The names of applicant Nos. 3 and 4 who are the wife and daughter of applicant No. 1 were not even known to the informant yet they have been involved. The question would then be in respect of the intention. The alleged obscene words are stated to have been used by applicant No. 1. There cannot be a common intention of utterances of abusive language and, therefore, there cannot be offence under Section 294 read with 34 of I.P.C. At the most then as against applicant Nos. 3 and 4, there would be offence under Section 323, 504, 506 of I.P.C which are non cognizable in nature. Witnesses, whose statements have been recorded under Section 161 of Criminal Procedure Code, are the husband-Ramesh, son-Dipak, daughter-in-law – Pratibha and son-in-law – Kumar. Interesting point to be noted is that all these witnesses have stated that they had gone to a nearby hotel for taking a cup of tea and informant was alone handling the customers in the shop (it is not a regular shop but a street shop or as a street vendor). When these witnesses heard the voice

of the informant, they went running to the spot and at that time they found that the applicants were assaulting informant. They rescued the informant and then when asked to the informant as to what has happened then she told about the abuses given to her by applicant No. 1. Therefore, these witnesses were not present at all when the alleged abuses were given. In respect of the abuses what they have stated is hearsay in nature.

6. In order to secure a conviction, the provisions of Section 294 of I.P.C require two particulars to be proved by the prosecution namely one 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 to be place, and second as song caused annoyance to others. If the Act is not obscene, or has not been done in any public place, or the song, recite or utter in or near any public place or that it causes no annoyance to others, no offence is committed. This has been so held in **Pawan Kumar vs. State of Haryana 1996 4 SCC 17**. Here, this is absolutely no offence regarding causing of annoyance to the public because of the said alleged utterance of the obscene word though there appears to be the spot panchnama regarding the public place. In other words except the statement of the informant regarding utterance of obscene words, there is nothing in the charge sheet. Therefore, definitely, ingredients of Section 294 of I.P.C are not getting attracted which is the only cognizable offence as stated by

the prosecution in the charge sheet.

7. Now learned APP has tried to say that the material in the charge sheet would disclose the offence under Section 509 of I.P.C. Now in respect of this, we would like to say that in order to secure conviction for the offence under Section 509, there should be utterance of the words with an intention to insult the modesty of any woman intending that such word or sound shall be heard by such woman. Now in the present case, the case is made out what the offence under Section 509, would be a question. We would like to take note of the FIR wherein there is absolutely no clear statement that there was dispute in respect of the space where informant and her family members were conducting the affairs of the shop or sell business. Rather she has stated that the Applicant No. 1 asked as to why she was carrying out the selling activity in front of his shop. Perusal of the spot panchanama will not indicate that there was the shop belonging to applicant No. 1 nearby the spot of incident. In the statements of witnesses which are taken belatedly i.e., after around 14 days of incident all of them have stated that there was dispute between the informant's family and the applicants in respect of the space where the informant and the family were carrying out the business and it is stated that the said dispute was going on since many days. There is no document in the entire charge sheet showing that the informants and her family had taken any license from the Municipal

Authorities for conducting the affairs of the shop in respect of that space were the alleged incident had taken place. Therefore, possibility of implication due to the dispute cannot be ruled out and, therefore, with the said material, it would be an abuse of process of law to ask the applicants to face the trial. The case is squarely covered under the guidelines of **State of Haryana vs. Bhajanlal AIR 1992 SC 604** hence, we proceed to pass following order :-

ORDER

1. Application stands allowed.
2. The proceedings SCC No. 11355/2021 pending before learned Judicial Magistrate First Class, Aurangabad arising out of FIR by Crime No. 520/2021 registered with City Chowk Police Station, District Aurangabad on 18.10.2021 for the offences punishable under Sections 294, 323, 504, 506 read with section 34 of I.P.C stands quashed and set aside as against all the applicants.

(Hiten S. Venegavkar, J.)

(Smt. Vibha Kankanwadi, J.)

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