



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3251 OF 2019

Vasant s/o Madhavrao Munde
Age: 44 years approximately,
Occu.: Reporter,
R/o. Chhatrapati Sanku, Sathe Chowk,
Subhash Road, Beed,
Taluka and District Beed
Pin 431122 (Maharashtra)

.. Applicant

Versus

1. The State of Maharashtra
at the instance of
Amalner Police Station, Beed,
District Beed, Maharashtra.
2. The Superintendent of Police,
The office of Superintendent of Police,
Beed, District Beed.
- 2A. The Principal Secretary,
Home Department, Government of Maharashtra,
Mantralaya, Mumbai – 02.
3. Ram s/o Shankar Shinde @
Prof. Ram Shankar Shinde
Age: 50 years, Occu.: Politician
and Social Work,
Hon'ble Cabinet Minister,
Government of Maharashtra Water
Conservation, Protocol Department,
Address as mentioned in FIR :
Cuffe Parade, Mumbai.
Permanent r/o. Karjat, Post: Chondi,
Taluka, Jamkhed, Dist. Ahmednagar.

.. Respondents

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Mr. Abhaykumar D. Ostwal, Advocate for the applicant.

Mr. V. K. Kotecha, APP for respondent Nos.1 and 2.

Mr. Mahesh Sonawane, Advocate for respondent No.3 (Appointed).

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

DATE : 20 JUNE 2025

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

. Present application has been filed for quashing the proceedings in Regular Criminal Case No.10 of 2019 pending before the learned Judicial Magistrate First Class, Patoda, District Beed arising out of the FIR vide Crime No.192 of 2017 dated 29.10.2017 registered with Amalner Police Station, District Beed for the offences punishable under Sections 153,(A), 505(2), 469, 501 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. Abhaykumar D. Ostwal for the applicant, learned APP Mr. V. K. Kotecha for respondent Nos.1, 2 and 2A/State and learned Advocate Mr. Mahesh Sonawane, who is appointed for respondent No.3.

3. Learned Advocate appearing for the applicant has vehemently submitted that respondent No.3 was the Ex Minister in the Government of Maharashtra when the FIR was lodged. He has alleged that with an intention to malign his reputation, some news item was published and circulated as if he had made those statements in a speech. Those were the fake news to spread the rumor. However, when offence under Section 153-A of Indian Penal Code was invoked, the prosecution ought

to have produced the sanction, as is required under Section 196(1)(a) of the Code of Criminal Procedure, however, that has not been produced. Sections 505(2) and 501 are in respect of defamation and they are the non cognizable offences falling in Chapter XXI and XXII of the Indian Penal Code. Except upon a complaint made by the person aggrieved by the offence, the Court cannot take cognizance of such offence in view of the bar under Section 196 of the Code of Criminal Procedure. Section 469 of the Indian Penal Code i.e. forgery for the purpose of harming reputations will not get attracted against the present applicant, as the present applicant has been posed as accused No.2 and role attributed to him is to transmit the alleged newspaper clipping to accused No.1.

4. Learned Advocate for the applicant submits that originally the FIR came to be lodged with Cuffe Parade Police Station, Colaba, Mumbai, which was on the basis of written complaint filed by respondent No.2. Part of the investigation was carried out there and thereafter the said police station abruptly, after it was noticed that respondent No.2 is from District Beed and within the jurisdiction of Patoda Police Station, transferred the investigation to Deputy Superintendent of Police, who then made it over to Amalner Police Station, District Beed. Thereafter it came to be registered at the said police station and the investigation has been undertaken. All these facts would show that unnecessarily the matter has been dragged only on the count that the informant was the

Minister in the Government. Even if the material in the charge-sheet is taken as it is, yet the offence has not been made out and, therefore, the proceedings deserve to be quashed and set aside.

5. Learned APP objected the application and submitted that though initially the offence was registered against unknown person, yet taking into consideration the I.P. address, accused No.1 was apprehended and from his mobile, it could be gathered that the present applicant had forwarded him the said fake news. It was tried to be pretended that an interview has been given in a daily newspaper wherein the informant alleged to have stated that he has been given the good portfolio in the Government only because he is capable and carries work. Late Shri. Gopinath Munde, who was the then Bhartiya Janata Party leader was treating the informant as his son and he has learnt the politics from him. It is alleged that he had also stated that even the daughter of late Shri. Gopinath Munde has not learnt the politics from him as has been learnt by the informant. It is then stated that the informant had made defamatory statement against the daughter of late Shri Gopinath Munde, which is stated to have created chaos with the party workers as well as in the mind of general public. According to the informant, this news clipping has brought disrepute to him and has caused damage to his political image. After the investigation, it has been transpired that no such news was ever published by the said newspaper, in whose name

the news item was circulated, therefore, it is certainly a forged information for which then the offence under Section 469 of Indian Penal Code gets attracted. It is a cognizable offence and, therefore, certainly, the offence under Section 505(2) and 501 of Indian Penal Code would then get attracted. Though they are non cognizable, but when they are with the cognizable offences, then they can be tried together.

6. A fact will have to be noted that respondent No.2/original informant, though served remained absent and, therefore, this Court had appointed learned Advocate Mr. Mahesh Sonawane, to represent the cause of respondent No.2. Thus, in spite of being a Minister at the time when he lodged the FIR, respondent No.2 has failed to appear, when it came to serving him the notice and appearance in the matter. The learned Advocate appointed to represent the cause of respondent No.2 has supported the arguments submitted by learned APP and submits that when the charge-sheet has been filed and it has been transpired that it was the creation of accused No.1 and then he has circulated it i.e. posted it on the Facebook account, he has committed a serious offence. The present applicant cannot be said to be justified in simply forwarding whatever he has received from any source of information. The statements of both the accused have been recorded and it can be seen that both of them have admitted that the present applicant had forwarded the Facebook news/post to accused No.1 and then accused No.1 had

posted it on his own Facebook account/profile. Now, the FSL report has also been received, which would be an additional piece of evidence and, therefore, let there be trial against the applicant also.

7. The first and the foremost fact to be noted is that for proving an offence under Section 153-A of Indian Penal Code, the prosecution should prove that the act may be by words either spoken or written, or by signs or by visible representations etc. has promoted the enmity between different groups on ground of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racials, language or regional groups or castes or communities. Here, the entire story is only against the informant, even we take the facts as it is. At the most, it can be said to be creating defamation, but certainly not hatred and there was no question of involvement of any group. Even if for the sake of arguments, we take that Section 153-A of Indian Penal Code is *prima facie* getting attracted, yet then there is hurdle under Section 196 of the Code of Criminal Procedure. Here, the cognizance has already been taken by the learned Judicial Magistrate First Class after filing of the charge-sheet. Section 196(1)(a) prohibits any Court from taking cognizance of offence under Section 153-A of Indian Penal Code except with the previous sanction of the Central Government or of the State Government. Along with the

charge-sheet, no such document granting permission/sanction has been annexed. Therefore, an act of taking cognizance in absence of such sanction is illegal. On this count, for the offence under Section 153-A of Indian Penal Code, the charge-sheet cannot be allowed to sustain.

8. Now, the second cognizable offence that has been stated to be getting invoked is Section 469 of Indian Penal Code. It prescribes that whoever commits forgery intending that the [document or electronic record forged] shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished. Now, in the entire charge-sheet, there is nothing on record to show that the said forgery has been committed by the present applicant. As per the prosecution story, the said news clipping under heading “पंकजा नव्हे मुंडे साहेबांचा राजकीय वारसदार — ना. राम शिंदे ” was available in his mobile, then transmitted the same to the WhasApp of accused No.1, who had then posted it on his Facebook account with I.D. Munde Dada. That means, already somebody had created that news item and from some other source, it had reached to the WhasApp of the present applicant. There is no investigation as to from whom the applicant had received the said news item. We cannot rely on the statement of the present applicant as the statement of the accused recorded by police is inadmissible. Under such circumstance, Section 469 of Indian Penal Code will not get

attracted against the present applicant. It cannot be stated that there was common intention between accused No.1 and applicant because the applicant has not published the said news item to anybody. Secondly, time and again, this Court has stated that the messages between the two mobile numbers on WhatsApp are end to end encrypted and unless one of them forwards it, the said post/news cannot go viral. Only those two persons can see the post and, therefore, neither Section 153-A of Indian Penal Code nor Section 469 of Indian Penal Code would get attracted against the present applicant.

9. As regards offences under Sections 501 and 505(2) of Indian Penal Code are concerned, those are non cognizable in nature and as aforesaid, the cognizable offences are not made out in the present matter as well as common intention under Section 34 of Indian Penal Code cannot get attracted here.

10. Another most important fact in this case is that initially the offence came to be registered with Cuffe Parade Police Station, copy of which is made available. It can be seen that on the letterhead of the informant, the said complaint was written and given to the police station. It was then numbered as Crime No.118 of 2017 with Cuffe Parade Police Station. Part of the investigation has been carried out wherein it appears that the police had reached up to original accused No.1, then all of a

sudden, taking into consideration the fact that the Facebook post was uploaded from Beed District, i.e. the place where accused No.1 resides, the FIR has been transferred by Deputy Commissioner of Police, Mumbai. Thereafter, Deputy Superintendent of Police, Beed has transferred it to Amalner Police Station. When in fact it is a Cyber crime and it was seen by the informant in Mumbai, then in view of Section 179 of the Code of Criminal Procedure i.e. when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. That means, the consequence of the act if we take the prosecution story as it is had ensued at Mumbai and therefore, the Cuffe Parade Police Station was having jurisdiction to make inquiry into. Now, at the time of transfer of the offence, proper procedure has not been adhered to. Deputy Commissioner of Police, Mumbai has no jurisdiction to transfer the FIR/offence after its registration. It was not the case that at the time of recording the FIR the police got the knowledge as to which police station other than itself has the jurisdiction to make inquiry and investigation and then after recording the FIR under zero number, it was transferred. In our opinion, the transfer of the present offence after its registration and part of investigation could have been only through this Court.

11. Further fact that is required to be noted is that when the offence came to be freshly registered with Amalner Police Station vide Crime No.192 of 2017, the document which has been styled as FIR is not signed by the informant. Therefore, the basic requirement of Section 154 of the Code of Criminal Procedure are not adhered to.

12. With all these reasons, 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 Regular Criminal Case No.10 of 2019 pending before the learned Judicial Magistrate First Class, Patoda, District Beed arising out of the FIR vide Crime No.192 of 2017 dated 29.10.2017 registered with Amalner Police Station, District Beed for the offences punishable under Sections 153,(A), 505(2), 469, 501 read with Section 34 of Indian Penal Code, stands quashed and set aside as against the present applicant - **Vasant s/o Madhavrao Munde.**

III) Fees of learned Advocate, who is appointed to represent the cause of respondent No.3, is quantified at Rs.7,000/- to be paid by the High Court Legal Services Sub Committee, Aurangabad.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm