



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

19 CRIMINAL APPLICATION NO.4072 OF 2022

Jaswantsingh Hajurasingh Shahu,
Age 56 yrs., Occ. Service,
R/o Gurudwara Gate No.3,
Nanded, Tq. & Dist. Nanded.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through In-charge,
Itwara Police Station, Nanded,
Tq. & Dist. Nanded.
- 2 Inderjitsingh Charansingh Dafedar,
Age 38 yrs., Occ. Business,
R/o Gurudwara Gate No.2,
Nanded, Tq. & Dist. Nanded.

... Respondents

...

Mr. M.K. Bhosale, Advocate h/f Mr. M.A. Granthi, Advocate for applicant

Mr. A.M. Phule, APP for respondent No.1

Mr. R.J. Nirmal, Advocate h/f Mr. S.S. Gangakhedkar, Advocate for
respondent No.2

...

WITH

CRIMINAL APPLICATION NO.2115 OF 2024

- 1 Indrajitsingh Charansingh Dafedar,
Age 38 yrs., Occ. Business,
R/o Gurudwara Gate No.2,

Vazirabad, Nanded, Tq. & Dist. Nanded.

- 2 Harmindarsingh Charansing Dafedar,
Age 39 yrs., Occ. Business,
R/o Gurudwara Gate No.2,
Vazirabad, Nanded, Tq. & Dist. Nanded.
- 3 Sarbjitsingh Charansing Dafedar,
Age 41 yrs., Occ. Business,
R/o Gurudwara Gate No.2,
Vazirabad, Nanded, Tq. & Dist. Nanded.
- 4 Inderjeetsingh Daljitsingh Sotha,
Age 40 yrs., Occ. Business,
R/o Flat No.303, B Wing, Sankalp Vihar,
Plot No.35/A, Near IDBI Bank,
Sector – 21, Khargar, Raigad.

... **Applicants**

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Itwara Police Station, Nanded,
Tq. & Dist. Nanded.
- 2 Jaydipsingh Jaswantsingh Sahu,
Age 28 yrs., Occ. Education,
R/o Gurudwara Gate No.3,
Nanded, Tq. & Dist. Nanded.

... **Respondents**

...

Mr. R.J. Nirmal, Advocate h/f Mr. S.S. Gangakhedkar, Advocate for applicants

Mr. A.M. Phule, APP for respondent No.1

Mr. M.K. Bhosale, Advocate for respondent No.2

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**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

DATE : 02nd JANUARY, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Both the matters are in fact cross cases. **Criminal Application No.4072 of 2022** has been filed for quashing the proceedings in Charge Sheet No.34/2023 pending before learned Judicial Magistrate First Class, Nanded arising out of First Information Report vide Crime No.291/2022 dated 22.10.2022 registered with Itwara Police Station, Nanded, for the offence punishable under Sections 294, 323, 506 read with Section 34 of the Indian Penal Code, 1860 and under Section 3 punishable under Section 25 of the Indian Arms Act, 1959; whereas **Criminal Application No.2115 of 2024** is filed for quashing the proceedings in Summary Criminal Case No.543/2023 pending before learned Judicial Magistrate First Class, Nanded arising out of First Information Report vide Crime No.290/2022 registered with same Police Station on the same day for the offence punishable under Sections 294, 323, 506 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate for applicants, learned APP for respondent No.1 and learned Advocate for respondent No.2, in both matters. In order to cut short, it can be said that they have argued in support of their

respective contentions.

3 At the outset, it can be said that when there are cross cases, certainly some incident has taken place and then it would be a disputed question of fact, as to which incident is genuine, however, taking into consideration the contents of the First Information Report and the statements of witnesses it can be certainly seen, as to whether the said material is sufficient to attract the offences under which the First Information Reports have been lodged. In both the matters it is stated in the First Information Report that all the accused came together and gave obscene abuses. First and the foremost fact is that Crime No.291/2022 has been filed against two persons, whereas Crime No.290/2022 is filed against three named accused and one unknown person. It could not have been possible that all the accused would have abused the other party in chorus. Offence under Section 294 of the Indian Penal Code has been invoked in both the cases. We would like to rely on the decision in **Pawan Kumar vs. State of Haryana and another** [1996 (4) SCC 17], wherein it has been held that -

“In order to secure a conviction, the provisions of Section 294 of the Indian Penal Code require two particulars to be proved by the prosecution viz. (i) 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 any public place; and (ii) has so caused annoyance to others. If the act is not obscene, or is not done in any public place, or

the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, no offence is committed.”

The place of incident is stated to be ‘Youth Khalsa Hotel, Bhagatsingh Road, Nanded’. Statement of the hotel owner has been recorded in Crime No.291/2022 viz. Jagjitsingh Dhariwal. He has stated that both the parties had come and were occupying different tables in A/C section of the hotel. According to him, the place where the other party was sitting was not visible to the other party. When waiter Sumit came running around 10.00 p.m., he informed that the quarrel is going on and, therefore, the owner went to the A/C room where he found that verbal exchanges and the abuses, so also scuffle, nobody was holding any weapon, one Jaydipsingh Shahu came but the hotel employees did not allow him to stay, but he was also giving abuses in filthy language. The hotel owner says that he as well as one Gurmitsingh separated the quarreling party and made them to go out of the hotel. Statement of waiter Sumit is also on the same line. Thus, it is to be noted from those statements that there were abuses those were given may be in filthy language may even be considered as obscene, but it has not caused any annoyance to others. Therefore, Section 294 of the Indian Penal Code is not at all attracted in both the cases. We are aware that statements so recorded under Section 161 of the Code of Criminal Procedure in one case

may not be *per se* considered in another case, but in that case it is to be noted that in respect of Crime No.290/2022 either from the First Information Report or from the contents of the statements of witnesses under Section 161 of the Code of Criminal Procedure it will not be revealed even *prima facie* that annoyance was caused to the public in general because of the acts of the accused. The basic ingredient of the offence is not made out and, therefore, it would be unjust to ask the applicants in both the cases to face the trial for the offence punishable under Section 294 of the Indian Penal Code. The ingredients of the offence under Sections 323, 506 read with Section 34 of the Indian Penal Code are certainly made out in both the cases. Further, as regards offence under Crime No.291/2022 is concerned, though the First Information Report was also registered for the offence under Section 3 punishable under Section 25 of the Arms Act; yet, the charge sheet is not filed under the said Section. It appears that it has been dropped by the police itself and, therefore, there is no question of setting aside the First Information Report in that Section. The applications deserve to be partly allowed. Hence, following order.

ORDER

- i) Both Criminal Applications stand partly allowed.

ii) Proceedings in Charge Sheet No.34/2023 pending before learned Judicial Magistrate First Class, Nanded arising out of First Information Report vide Crime No.291/2022 dated 22.10.2022 registered with Itwara Police Station, Nanded stands quashed and set aside as against applicant **Jaswantsingh Hajurasingh Shahu**, to the extent of offence punishable under Section 294 of the Indian Penal Code only.

iii) Proceedings in Summary Criminal Case No.543/2023 pending before learned Judicial Magistrate First Class, Nanded arising out of First Information Report vide Crime No.290/2022 dated 22.10.2022 registered with Itwara Police Station, Nanded stands quashed and set aside as against applicants viz. 1) **Indrajitsingh Charansingh Dafedar**, 2) **Harmindarsingh Charansing Dafedar**, 3) **Sarbjitsingh Charansing Dafedar** and 4) **Inderjeetsingh Daljitsingh Sotha**, to the extent of offence punishable under Section 294 of the Indian Penal Code only.

iv) It is clarified that the relief of quashing aforesaid both the proceedings and First Information Reports for other offences stands rejected.

v) The concerned Court to take further steps as against applicants.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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