



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO.77 OF 2025

1. Ramankumar s/o Bhagwandas Malik,
Aged about 68 Years
Occupation - Private
R/o. S/o Bhagwandas Malik,
Flat No.14, Shree Mangal Apartment,
Giripeth, Nagpur
2. Ashish s/o Gajanan Hatwar,
Aged about 35 years,
Occupation – Private
R/o. S/o Gajanan Hatwar,
Near Jadu Mahal, Plot No.17,
Galli No.12A, Bajrang Nagar,
Parvati Nagar, Nagpur

...APPLICANTS

VERSUS

1. The State of Maharashtra,
through Station House Officer,
Police Station Sitabardi,
Nagpur
2. Shailendra s/o Ramkhilwan Tiwari,
Aged about 51 Years,
Occupation - Private,
R/o. Flat No. G-2,
Omkar Apartment,
Giripeth, Nagpur

...NON-APPLICANTS

Mr. A.N. Rangari, Advocate h/f Mr. A.S. Mardikar, Advocate for the applicants.
Mr. C.A. Lokhande, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JULY 28, 2025.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for both the parties.

2. By this application, the applicants are seeking quashing of the criminal proceeding bearing No.3127/2016 pending before the Judicial Magistrate First Class, Court No.2, Nagpur.

3. Brief facts which are necessary for the disposal of the application are as under:

A] Respondent No.2 who is the original complainant has lodged the First Information Report that on 21.06.2016 at around 7.45 p.m. respondent No.2 along with his mother gone to the Hanuman Mandir situated near RTO office, Giripeth, Nagpur wherein he was abused as well as threatened by the present applicants with a dire consequences. It is further alleged that he was abused in a filthy language. On the basis of the said report, police have registered the crime under Section 294 and 506 of the Indian Penal Code. After completion of the investigation, the Investigating Officer has submitted the charge-sheet against the present applicant which is numbered as Regular Criminal Case No.3127/2016.

4. Learned Counsel for the applicant submitted that even taking the allegations as it is, no offence is made out as the test which is to be applied for the obscenity, if applied, by no stretch of imagination it can be said that the words used by the present applicants covers under the definition of obscenity. He submitted that even accepting the allegation as it is, no offence is made out as far as Section 294 of the IPC is concerned. He also submitted that as far as the allegation as to the threatening is concerned it is also a general allegation levelled against the present applicants and thus, there is no criminal intimidation to indicate that there was an act of threatening to the present respondent No.2. In view of that, the entire criminal proceeding deserves to be quashed.

5. In support of his contention, he placed reliance on N.S. Madhanagopal and anr. Vs. K. Lalitha [(2022) 15 S.C.R. 649] and Manik Taneja and anr. Vs. State of Karnataka and anr. [(2015) 1 S.C.R. 156] and submitted that as no offence is made out entire criminal proceeding deserves to be quashed.

6. Learned APP strongly opposed the application and submitted that the recitals of the FIR as well as the statements of the witnesses discloses the offence against the present applicants, and therefore, the application deserves to be rejected.

7. On going through the entire investigation papers wherein the allegation is that when the informant had been to the Maroti temple at that time the present applicants abused him in a filthy language and also threatened him. The test of obscenity under Section 294(b) of the IPC is whether the tendency of the matter charged under the obscenity is to deprave and corrupt those whose minds are open to such immoral influences. Section 294(b) of the IPC talks about the obscene acts. Section 294 of the IPC which is reproduced as under :

“294. Obscene acts and songs - Whoever, to the annoyance of others -

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.”

8. The Hon’ble Apex Court in the case of N.S. Madhanagopal and anr. Vs. K. Lalitha (supra) wherein while considering the test of ‘obscenity’ under Section 294(b) of the IPC observes as follows:

“..... the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences” This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC and in Samuel Roth v. U.S.A., 354 US 476 (1957) wherein the test of ‘obscenity’ is the “substantial tendency to corrupt by

arousing lustful desires". It is further observed that in order to be 'obscene' the matter must "tend to sexually impure thoughts". I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are 'obscene' and the utterance would constitute an offence punishable under S. 294(b) IPC".

9. It is further observed by the Hon'ble Apex Court that it has to be noted in such type of cases that the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294 (b) of IPC is made out.

10. In the light of the above observation, if the facts of the present case are taken into consideration, admittedly, the words used are only to the extent of some abuses are uttered by the present applicants. As observed by the Hon'ble Apex Court that to prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the present case also. No one has spoken about the obscene words, it is only the complainant statement that some filthy language is used by the present applicant. Thus, considering the allegations levelled against the present applicants and in absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294 (b) of IPC are made out.

11. Similarly, as far as the allegation regarding the threatening is concerned on going through the definition of criminal intimidation which would indicate that there must be an act of threatening to another person, of causing any injury to the person, reputation or property of the person threatened or to the person in whom the threatened person is interested and the threat must be with intent to cause alarm or to make them do or omit to do something they are legally entitled to. Mere expression of words without the intention to cause alarm would not be sufficient to bring in the application of this section but material has to be

placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case it appears that there was no intention on the part of the applicants to cause alarm in the minds of the second respondent i.e. complainant causing obstructions. As far as the sentence used by the present applicants is concerned which appears to be a general statement, and therefore, the application of Section 506 of IPC is also a doubtful. Thus, in the above facts and circumstances, the applicant has made out a case for quashing of the criminal proceeding as no offence is made out against the present applicants. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The criminal proceeding bearing No.3127/2016 pending before the Judicial Magistrate First Class, Court No.2, Nagpur is hereby quashed and set aside.

12. The criminal application stands disposed of.

(URMILA JOSHI-PHALKE, J.)