



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

CRIMINAL APPLICATION [APL] NO.517 OF 2025

- Applicants** : 1. Rajesh s/o Narayansingh Solanki,
Aged about 54 years, Occu. Private,
R/o Bhaijaankijim, Bank Colony Road,
Hanuman Mandir Chowk, New Laxmi Nagar,
Kudwa, Gondia – 441614.
2. Shivshankar s/o Narayansingh Solanki,
Aged about 45 years, Occu. Private,
R/o. S/o. Narayansingh Solanki, In front of Lahari
Sabhagruh, New Laxmi Nagar, Gondia.
3. Pankaj s/o Narendrasinh Bais,
Aged about 42 years, Occu. Private,
R/o. S/o. Narendrasinh Bais, In front of Durga Mandir,
Bappa Bhavan, Shri Nagar, Gondia.
4. Abhishek s/o Rajesh Solanki,
Aged about 26 years, Occu. Advocate,
R/o Bhaijaankijim, Bank Colony Road,
Hanuman Mandir Chowk, New Laxmi Nagar,
Kudwa, Gondia – 441614.
- Versus –

- Non-Applicants** : 1. The State of Maharashtra,
Through Station House Officer,
Police Station Gondia City, District Gondia.
2. Amit s/o Gangrao Pawar,
Bakkal Number 1211, Aged about adult,
Occ. Police Officer, C/o Police Station Gondia City,
District Gondia.

=====

Mr. Aniket N. Rangari, Advocate for the Applicants.
Mr. A.R. Chutke, A.P.P. for Non-Applicant No.1/State.
None for Non-Applicant No.2.

=====

CORAM : **ANIL L. PANSARE & M.M. NERLIKAR, JJ.**
DATE : **24th JULY, 2025.**

ORAL JUDGMENT : *(Per M.M. Nerlikar, J.)*

01. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned Counsel appearing for the parties.

02. The present application is being filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for quashing and setting aside the charge-sheet bearing No.262/2023, dated 24/11/2023 arising out of Crime No.676/2023 registered with Police Station Gondia City for the offence punishable under Section 160 of the Indian Penal Code, 1860 (I.P.C.)

03. **Brief facts :**

- I. Non-applicant No.2, who is a Police Constable of Police Station Gondia City, lodged F.I.R. No.676/2023 under Section 160 of I.P.C. alleging that on 22/10/2023, at about 5:00 p.m., one Aditya Rajesh Solanki and Shubham @ Karansingh Sumersingh Bais approached the Police Station for lodging the complaints against each other about abusing and assaulting each other at Durga Chowk, Gondia. As both the parties were having minor injuries, the informant along with other police staff taken both the parties to K.T.S. Hospital, Gondia for the purpose of medical examination. At the Casualty Ward of K.T.S. Hospital, when the

medical examination was going on, the applicants and other two accused persons allegedly started fighting in the hospital premises. The informant came out and saw that the applicants and other accused were fighting with each other, therefore, he along with other staff stopped the accused persons from fighting with each other. It is further alleged that the accused persons i.e. the applicants were fighting in the public place and, therefore, F.I.R. came to be registered against the applicants.

04. We have heard both parties. The learned Counsel for the applicants submits that the applicants are praying for quashing of the charge-sheet on the ground that no offence is made out as contemplated under Section 160 of I.P.C.. He further submits that the ingredients of Section 159 for committing the offence of affray are not satisfied. He further submits that even though the allegations alleged in the F.I.R. are taken as it is, it cannot be said that the offence is committed under Section 159 of I.P.C. He also submits that though there was fighting amongst the accused persons and others at public place, due to that fighting, there was no disturbance to the public peace, which is an essential ingredient of Section 159 of I.P.C. and, therefore, as there is no breach/disturbance to the public peace, no offence is made out.

05. To buttress his submissions, the learned Counsel for the applicants has relied on the unreported judgment of the High Court of

Judicature of Bombay, Bench at Aurangabad in Criminal Application No.3624 of 2023 (*Nadeem Ajij Pathan and another vs. The State of Maharashtra and another*), wherein an identical issue was decided and the Hon'ble High Court, Bench at Aurangabad was pleased to quash and set aside the F.I.R., which was registered under Section 160 of I.P.C.

06. On the other hand, the learned Additional Public Prosecutor, by filing his reply, contended that the applicants and other were quarreling and assaulting each other in the premises of K.T.S. Hospital, Gondia and it is only due to intervention of the informant and staff of the hospital, there was no further escalation. He has further submitted that now the charge-sheet is filed and this is a fit case that the accused-applicants should be tried.

07. We have gone through the charge-sheet, which includes statements recorded under Section 161 of the Code of Criminal Procedure of some of the eye-witnesses. We have also gone through the F.I.R. lodged by non-applicant No.2. The material, which was collected during investigation, goes to show that there was free fighting between the parties. However, it falls short to attract Section 159 of I.P.C., which defines affray as under :

“159. Affray.—When two or more persons, by fighting in a public place, disturb the public peace, they are said to “commit an affray”.

08. As per the ingredients of Section 159 of I.P.C., there must be two or more person, there should be fighting between them in public place and

the result of such fighting should be in disturbance to the public peace. If these three ingredients are satisfied, then and then only it can be said that the accused has committed an offence of affray. Under Section 160 of I.P.C., punishment of imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both is provided for committing the offence of affray.

09. We have considered the rival submissions of both the parties. The informant is a Police Constable, who has taken the applicants for medical examination at K.T.S. Hospital, however, the applicants were fighting with each other. Immediately, the informant and other staff of the hospital intervened and stopped them from fighting. Therefore, two ingredients of Section 159 of I.P.C. are satisfied that there were more than two persons and there was fighting in the public place. However, the third limb of Section 159 of I.P.C. was absent, as it can be gathered from the material placed before us and, therefore, it cannot be said that the applicants have committed the offence of affray. It would be useful to refer to the order dated 04/12/2024 passed in Criminal Application No.3624 of 2023 by the High Court of Bombay at Aurangabad Bench, wherein the learned Division Bench by relying on the reported judgment in the case of **Mahant Kaushalya Das vs. The State of Madras – AIR 1966 SC 22** has held thus:

“6. mere causing public inconvenience is not sufficient. Here there are no statements of persons from the

public to see even prima facie, as to whether the public peace was disturbed. Furthermore, the use of the word fighting will not be sufficient as in the present case the word used is 'Maramari'. The said fighting should be as a result of use of force and further it can be considered that neither in the F.I.R. nor in the statements under Section 161 of the Code of Criminal Procedure or even by the Investigating Officer, it was tried to extract as to what was the point/reason, on which those persons were fighting. It also appears that though four persons were taken in custody, they were not taken for medical examination in order to see as to whether the said fighting has caused any kind of hurt to any one of them or all of them."

10. The present case is also somewhat identical. The entire record does not show that there was disturbance to the public peace. The contents of the F.I.R. as well as the material in the charge-sheet depict that the material is not sufficient to attract the ingredients of Section 159 of I.P.C., and therefore, it cannot be said that the applicants have committed an offence punishable under Section 160 of I.P.C.

11. The law laid down in the case of **State of Haryana vs. Bhajan Lal – AIR 1992 SC 604**, wherein seven parameters have been laid down, but the present case would fall in one of the categories i.e. Clause (a) of paragraph 8.1, which reads thus:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;"

12. Therefore, considering the above facts and circumstances, a case is made out to quash and set aside the charge-sheet. Hence, the order accordingly.

ORDER

- i. The criminal application is allowed.
- ii. Charge-sheet bearing No.262/2023 dated 24/11/2023 arising out of the First Information Report No.676/2023, dated 12/10/2023 registered with Police Station Gondia City for the offence punishable under Section 160 of I.P.C. along with the criminal proceeding bearing S.C.C. No.3374/2023 pending on the file of the learned 2nd Judicial Magistrate First Class, Gondia are hereby quashed and set aside.
- iii. Rule is made absolute in the aforesaid terms.
- iv. There shall be no order as to costs.

(M.M. Nerlikar, J.)

(Anil L. Pansare, J.)