



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH : NAGPUR
CRIMINAL REVISION APPLICATION NO.162 OF 2023**

- 1) Shubham s/o Diliprao Shewale,
Aged about 28 years, Occ: Private,
R/a Ward no. 1, Chandni Chowk,
Gondkheri, Nagpur-440023

.... Applicant(s)

// VERSUS //

- 1) State of Maharashtra
Through Police Station Sonegaon,
Nagpur

.... Non-applicant(s)

.....
Mr. D.N. Mehta, Advocate for the applicant
Mr. Bissa, APP, for the non-applicant-State
.....

CORAM : SANDIPKUMAR C. MORE, J.

DATE OF RESERVING THE JUDGMENT : 20.12.2024

DATE OF PRONOUNCEMENT OF THE JUDGMENT : 07.01.2025

JUDGMENT :

1. The present Criminal Revision Application is preferred against the order dated 03.02.2023 passed by the learned trial Court i.e. the *Ad hoc* District Judge-1 and ASJ, Nagpur below Exh.3 in Sessions Trial No.660 of 2022, preferred by the present applicant i.e. the accused No.2 in that case. In the impugned order, the application filed by the present applicant below Exh.3 for

discharging him from the offence under Sections 253, 294, 506 and 34 of the Indian Penal Code (IPC), has been rejected.

2. The learned counsel for the applicant submits that the prosecution has claimed that due to disconnection of electricity in the house of the accused No.1, he got annoyed and when the Maharashtra State Electricity Board (MSEB) officers were only having tea after such disconnection, the accused No.1 along with the present applicant had gone there and there was some incident between the accused No.1 and the informant MSEB officer and therefore, the prosecution involved the present applicant who had no role in the incident. The learned counsel for the applicant further submitted that the police have recorded the statements of the tea stall owner and other eye witnesses only to involve the present applicant falsely in the crime. Moreover, no ingredients of offence under Section 353 of the IPC are attracted in the present crime against the applicant. Thus, he prayed for discharging the present applicant from the aforesaid crime. He has also relied upon the judgment of the Hon'ble Apex Court in the case of *P. Vijayan Vs. State of Kerala and another*, reported in (2010) 2 SCC 398.

3. On the contrary, the learned APP strongly opposes the application on the ground that there is *prima facie* material available against the present applicant and the informant in his report itself had stated that they were assigned with the duty to collect the amount of pending electricity bills on the relevant time. He pointed out that one of the witnesses had also recorded the incident in his mobile phone and there is material on record to show that at the relevant time the present applicant had rushed upon the informant and in heated exchange of words, he asked the informant as to why they noted down the number of his car. Thus, the learned APP prayed for dismissal of the revision application.

4. It is significant to note that as per the report lodged by the informant MSEB officer, they were assigned with duty to collect the amount of pending electricity bills in the area where the accused No.1 was residing and when they came across the fact that the electricity bill in respect the house of the accused No.1 was not paid, they disconnected the same. Further due to such act, the accused No.1 got annoyed and he came at the place where the

informant and his associates were having tea and the incident had taken place.

5. It is specifically mentioned in the complaint itself that the present applicant had also accompanied accused No.1 and at the relevant time, he rushed upon the informant and utter words arrogantly. From the statements of witnesses, who had seen the incident, it reveals that the present applicant had also taken part in the incident. Though at present, it is doubtful as to whether the ingredients of offence under Section 353 of the IPC are attracted against the present applicant, but he was very well with the accused No.1 at the time of incident and had rushed upon the informant by uttering words arrogantly. Further it is important to note that the video recording was also done in respect of the incident by one of the witnesses in his mobile phone.

6. Therefore, considering the *prima facie* material against the present applicant, it would not be proper to discharge him at this premature stage. For discharging the applicant-accused, it is necessary that even if the charge-sheet is accepted as it is, then also

no overt act constituting the offence levelled against him is established. However, in the instant case, the witnesses are stating about the overt act done by the present applicant, as to how he along with the accused No.1 rushed upon the complainant and deterred him from discharging his duty as public servant. Therefore, while considering the present application, *prima facie* material is to be seen and no detail discussion or mini-trial is to be held as to how the charge against the accused No.2 is not attracted.

7. The judgment relied upon by the learned counsel for the applicant is in respect of the quashment of charge, which cannot be made applicable in the instant case, wherein there is a need of trial to determine as to whether the applicant/accused No.2 has committed crime or not. As such, no perversity is found in the impugned order and therefore, the present Revision Application stands **dismissed**.

SANDIPKUMAR C. MORE, J