



IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1616/2023.

1. Shekhar s/o Mahadeo Bhelave,
Aged about 39 years, Occu - Agri.,

2. Raju s/o Tilakchand Sursaut,
Aged about 40 years, Occu - Agri.,

3. Liladhar s/o Shalikram Rahangdale,
Aged about 49 years, Occu - Agri.,

4. Shishupal s/o Umrao Gabhane,
Aged about 37 years, Occu - Agri.,

5. Nitesh s/o Shalikram Khobragade,
Aged about 37 years, Occupation -
Member G.P.

All residents of Indora (Khurd),
Tahsil Tirora, District Gondia.

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APPLICANTS.

VERSUS

1. The State of Maharashtra,
through the P.S.O. of P.S. Tirora,
Tahsil Tirora, District Gondia.

2. Chandramani s/o Shamrao Ramteke,
Aged about 42 years, Occupation -

Rgd.

Constable, resident of Bakal No.1532
P.S. Tirora, Tahsil Tirora, District Gondia.... **NON-APPLICANTS.**

Mr. V. Borkar, Advocate for Applicants.
Mr. G. Umale, A.P.P. for Non-applicant No.1.
None for Non-applicant No.2 - Served.

**CORAM : NITIN B. SURYAWANSHI AND
PRAVIN S. PATIL, JJ.**

DATE : FEBRUARY 11, 2025.

ORAL JUDGMENT (Per Nitin B. Suryawanshi, J.) :

Rule. Rule is made returnable forthwith. By consent of the learned Counsel present for parties, the matter is taken up for final disposal.

2. This application filed under Section 482 of the Criminal Procedure Code challenges first information report No.0806/2023 registered with Tirora Police Station, District Gondia for offences under Sections 143 and 145 of the Indian Penal Code and Section

135 of the Maharashtra Police Act, 1951.

3. On 12.10.2023, non-applicant no.2- Constable lodged first information report against applicants alleging that, while patrolling he received a secret information that villagers of village Indora (Khurd) are going to sit on indefinite strike in front of office of the Taluq Magistrate protesting for problems faced by them in respect of Zilla Parishad Primary School. Non-applicant no.2 then went to the office of Taluq Magistrate at about 12 p.m. and informed applicants that Collector, Gondia has issued order under Section 37[1] [3] of the Maharashtra Police Act prohibiting public assembly. He therefore, gave notice under Section 149 of the Criminal Procedure Code, however, applicants did not withdraw their hunger strike. Therefore without obtaining prior permission and without giving information to the Police, applicants have forced students studying in Zilla Parishad Primary School to come along with their parents in school uniform, and forced them to participate in the strike for solving problems of villagers. Applicants therefore violated order No.423/2023 dated 06.10.2023 of Collector, Gondia issued under

Rgd.

Section 37[1][3] of the Maharashtra Police Act, and thereby they have committed offence under Sections 143 and 145 of the Indian Penal Code read with Section 135 of the Maharashtra Police Act.

4. Learned Counsel for applicants assailing the first information report contends that ingredients to constitute offence under Section 141 of the Indian Penal Code are missing, and therefore, prosecution of applicants under Sections 143 and 145 of the Indian Penal Code is an abuse of process of law. He further submits that for their legitimate grievance applicants were sitting on hunger strike, as their grievances were not being redressed by the administration. Applicants have fundamental right to protest and for that they are not liable to be prosecuted. By relying on the judgment reported in **(2004) 4 SCC 205 -Charan Singh and others .vrs. State of U.P.**, he submits that the first information report against applicants is liable to be quashed and set aside.

5. Per contra, learned A.P.P. for non-applicant no.1 supports the first information report. He states that allegations made

in the first information report are sufficient to prosecute applicants under Sections 143 and 145 of the Indian Penal Code read with Section 135 of the Maharashtra Police Act.

6. It is a matter of record that the Collector, Gondia has issued a notification dated 06.10.2023, which was in operation w.e.f. 09.10.2023 to 23.10.2023. It further appears from record that before protest, applicants have not obtained prior permission of the administration.

7. Section 141 of the Indian Penal Code defines unlawful assembly as under :

***“141. Unlawful assembly.**—An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is—*

First.—To overawe by criminal force, or show of criminal force, [the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.”

Thus, to prove common object of the assembly there has to be use of criminal force by the assembly with a view to commit mischief or criminal trespass or resist execution of any law or of any legal process. From reading of the first information report and charge sheet, it is clear that no ingredients of Section 141 of the Code are made out against applicants in the present case. Prosecution of applicants therefore, under Sections 143 and 145 of the Indian Penal Code is unsustainable in the facts of present case.

8. In Charan Singh [supra], it is held that mere presence in

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the unlawful assembly cannot render a person liable, unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141 of the Indian Penal Code. In the present case, no such material is available to prosecute applicants under Sections 143 and 145 of the Indian Penal Code. However, prosecution of applicants under Section 135 of the Maharashtra Police Act is justified.

9. In the result Criminal Application is partly allowed. First information report No.0806/2023 registered with Tirora Police Station, District Gondia for offences under Sections 143 and 145 of the Indian Penal Code against applicants is hereby quashed and set aside.

Prosecution of applicants under Section 135 of the Maharashtra Police Act is maintained.

10. Rule is made absolute in the aforesaid terms.

JUDGE

JUDGE