



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

CRIMINAL APPLICATION (APL) No.180 OF 2024

Aziz Ahmed Jahur Ahmed,
Aged about 45 years,
Occupation : Agriculturist,
R/o. Tekdipura, Mangrulpir,
Tah. Mangrulpir, Distt. Washim. : APPLICANT

...VERSUS...

1. The State of Maharashtra,
Through its Police Station Officer,
Police Station Mangrulpir,
Distt.Washim.
2. Sumit s/o. Anil Chauhan,
Aged about 31 years,
Occupation : Service,
R/o. C/o. Police Station Mangrulpir,
Distt. Washim. : NON-APPLICANTS

Mrs. Kirti Deshpande, Advocate for Applicant.
Mr. M.J. Khan, Addl. Public Prosecutor for Non-applicant No.1.

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 15th SEPTEMBER, 2025.
PRONOUNCED ON : 20th SEPTEMBER, 2025.

JUDGMENT : (Per : Nandesh S. Deshpande)

1. Heard. Admit. Heard finally by consent of learned
counsel appearing for the parties.
2. This is an application filed under Section 482 of the

Code of Criminal Procedure by the accused No. 4. The said F.I.R. is for the offences punishable under Sections 108, 290 and 291 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

3. As per the said F.I.R. bearing No.1146/2023 on 19.1.2023, it was alleged that on 14.1.2023 the applicant herein along with others without obtaining permission from the competent authority carried out procession and played loud music. It was further alleged in the said process there was use of loudspeaker and Disc Jockey (DJ). It was alleged that in spite of giving of notice the applicant did not pay heed to the same and continued with the procession.

4. After completion of the investigation pursuant to the said F.I.R. the non-applicant No.1 submitted final report bearing No.124/2023 against the applicant for the offences mentioned above. It is this charge-sheet which is challenged in the present application.

5. We have heard Mrs. Kirti Deshpande, learned counsel for the applicant and Mr. M.J. Khan, learned Additional Public Prosecutor for the non-applicants.

6. Learned counsel for the applicant submits that as far as offence under Section 188 of the Indian Penal Code is concerned, there is a specific bar under Section 195 of the Criminal Procedure

Code in as much as cognizance of such an offence can only be taken on a written complaint by the complaint authority. She further states that the charge-sheet does not attribute any role to the applicant that he organized or led the procession. In the submission of learned counsel for the applicant, even no offences under Sections 290 and 291 of the I.P.C. are attracted as the prosecution has not been able to show any injury or danger or public annoyance. Furthermore, it is submitted that no offence under Section 135 of the Maharashtra Police Act is also made out. In nutshell, it is the submission of the learned counsel for the applicant that the allegations in the F.I.R. even though they are taken on their face value do not constitute any offence. She relies on a judgment reported in **2025 SCC Online SC 1753, Devendra Kumar Vs. State (NCT of Delhi) and another**, in support of her submissions.

7. Learned Additional Public Prosecutor for the non-applicants vehemently opposed the submissions of the learned counsel for the applicant. He states that the averments in the F.I.R. are sufficient to constitute offences as mentioned in the F.I.R.

8. In the backdrop of these facts, we have perused the averments in the F.I.R. and the charge-sheet as also the relevant legal provisions. Section 188 of the Indian Penal Code speaks about

disobedience to order duly promulgated by public servant and contemplates that whoever knowing that by an order promulgated by a public servant he is directed to abstain from certain acts disobeys such direction would be punishable for imprisonment as mentioned in the said Section. However, Section 195 of the Criminal Procedure Code puts an embargo for prosecuting offences punishable under Sections 172 to 188 of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

9. In the present case, as far as offence under Section 188 of the I.P.C. is concerned the disobedience is order of the Collector District Washim passed on 6.1.2023 which prohibited certain acts as per Section 37(1)(3) of the Maharashtra Police Act. However, for taking cognizance of such offence complaint is to be made by the Collector or by any officer subordinate to him. In the present case admittedly the complaint is made by Police Constable Sumit Anil Chauhan. Thus, in view of express bar under Section 195 of the Criminal Procedure Code, we are of the opinion that offence under Section 188 of the Indian Penal Code is not made out.

10. As far as offences under Sections 290 and 291 of the Indian Penal Code are concerned they speak about the punishment

for public nuisance and continuance of nuisance after injunction to discontinue respectively. While Section 135 of the Maharashtra Police Act provides for penalty for contravention of rules or directions under Sections 37, 39 and 40. It is thus clear that the offences punishable under Sections 290 and 291 are totally distinct from the offence punishable under Section 188 of the I.P.C. Learned counsel for the applicant has relied upon the judgment *Devendra Kumar* (supra) to support that said offences are not distinct but overlap each other. However, we are of the opinion that while Section 188 only speaks about disobedience to order promulgated by public servant offences under Sections 291 and 292 speaks about public nuisance and continuance thereof. In the judgment relied upon by the counsel for the applicant, the Hon'ble Apex Court in *Devendra Kumar* (supra) while drawing conclusion in para 59 sub-clause (v) has recorded as under :

“59(v). Where an accused is alleged to have committed some offences which are separate and distinct from those contained in Section 195, Section 195 will affect only the offences mentioned therein. However, the courts should ascertain whether such offences form an integral part and are so intrinsically connected so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of Section 195 of the Cr.P.C. This would all depend on the facts of each case.”

11. In the light of the dictum of the Hon'ble Supreme Court

it is clear that Section 195 will effect only the offences mentioned therein and no other offences. We have already recorded that the offences of public nuisance are separate and distinct from the offence under Section 188 and, therefore, there is prima facie material to prosecute the applicant under those sections. In that view of the matter, the situation would squarely fall under clause (6) of the various contingencies mentioned in the judgment in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, reported in **MANU/SC/0115/1992** as there is an express legal bar engrafted in the Criminal Procedure Code for the institution and continuance of the proceedings. We, therefore, are of the view that the application needs to be allowed partly, as far as offence under Section 188 is concerned. The prosecution would continue with respect to rest of the Sections i.e. 290 and 191 of the I.P.C. and Section 135 of the Bombay Police Act. Hence, we proceed to pass following order :

ORDER

- (i) The application is partly allowed.
- (ii) The First Information Report bearing No.46/2023, dated 19.1.2023, registered with non-applicant No.1 and the Final Report No.124/2023, dated 20th June, 2023 against the applicant is quashed only to the extent of offence punishable

under Sections 188 of the Indian Penal Code is concerned.

(iii) The prosecution would continue for the remaining offences i.e. Sections 290 and 291 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

(iv) The application is disposed of.

(Nandesh S. Deshpande, J.)

(Urmila Joshi-Phalke, J.)

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