



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

CRIMINAL APPLICATION (APL) No.1744 OF 2024

1. Charan S/o Govinda Waghmare,
Aged about 52 years,
Occupation : Ex-MLA,
R/o. Tq. Mohadi, Dist. Bhandara.
 2. Vijay Kundlik Bhure,
Aged about 35 years,
Occupation : P.A. of Ex-MLA of applicant No.1,
R/o Dongargaon, Tq. Mohadi, Dist. Bhandara.
 3. Nandu @ Chandrashekhar Natthu Rahangdale,
Aged about 38 years,
Occupation : Chairman, Panchayat Samiti,
Tumsar, R/o Village Yerli,
Tq. Tumsar, Dist. Bhandara.
 4. Amit Chandrabhan Rangari,
Aged about 33 years,
Occupation : Press reporter of Daily Newspaper
Navrashtra, R/o Govardhan Nagar,
Tumsar, Dist. Bhandara.
 5. Dr. Shantaram Panduranji Chafale,
Aged about 63 years,
Occupation : Retired Animal Husbandry
Development Officer,
R/o Shriram Nagar, Tumsar,
Distt. Bhandara.
 6. Prashant Harishchandra Lanjewar,
Aged about 56 years,
Occupation : Agriculturist,
R/o MIG-28, MHADA Colony,
Bhandara.
- : APPLICANTS

...**VERSUS**...

State of Maharashtra,
Through P.S.O., P.S. Mohadi,
District : Bhandara.

: NON-APPLICANT

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Mr. A.M. Chandekar, Advocate for Applicants.
Mr. A.G. Mate, Additional Public Prosecutor for Non-applicant.

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CORAM : **URMILA JOSHI-PHALKE AND**
NANDESH S. DESHPANDE, JJ.
RESERVED ON : **02nd DECEMBER, 2025.**
PRONOUNCED ON : **15th DECEMBER, 2025.**

JUDGMENT : (Per : Nandesh S. Deshpande, J.)

1. Heard. Admit. Heard finally by consent of learned counsel appearing for the parties.
2. The applicant has filed the present application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing of First Information Report in Crime No.289/2024 dated 12.11.2024, registered with non-applicant for the offences under Section 189(2) and 223 of the Bharatiya Nyaya Sanhita, 2023 read with Section 135 of the Maharashtra Police Act. The application also prays for quashing charge-sheet No.13/2025 in the said crime number which is filed by the prosecution after completion of the investigation.
3. As per the contents of the First Information Report lodged by the non-applicant, the complainant in the present matter

is a Police Personnel and was on duty of election and the Code of Conduct was in force. On 11.11.2024 at about 8.00 p.m. information was received from one Arvind Tirpude that at Mauza Mandesar, illegal distribution of kits is going on under the pretext of election. Hence, a raid was conducted and it was found that kit was distributed and there was one Bolero Pick-Up vehicle bearing 20 bags of sweets, snacks and biscuits and three persons were distributing the same. Hence, the offence was registered. Thereupon, said Ashok Murkute visited the Police Station and lodged a complaint, upon which non-cognizable offence came to be registered. Thereafter, the applicant No.1 along with 70 to 80 persons came to the Police Station and gave a bite interview to a Reporter. Thus, a chaos was created by the applicant No.1 who was accompanied with the other applicants. It was then realized that the chaos at the Police Station was created because of complainant and the raid done by the Police Authorities about distribution of kit. Thus, the offence in question was registered against the applicants. It is this First Information Report and the consequent charge-sheet which is being challenged in the present application on the grounds stated in the said application.

4. We have heard Mr. A.M. Chandekar, learned counsel for the applicants and Mr. A.G. Mate, learned Additional Public

Prosecutor for the non-applicant/State.

5. Learned counsel for the applicants submits that bare reading of the First Information Report in question and the charge-sheet reveals that no offence as much less as mentioned in the First Information Report are made out. He submits that as far as offence under Section 223 is concerned, there is a bar for taking cognizance of the said offence under Section 215 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 195 of the Code of Criminal Procedure). He further submits that even offence under Section 189 (2) regarding unlawful assembly is not made out against the accused. He also submits that no ingredient of offence under Section 135 of the Bombay Police Act is also made out from the reading of the First Information Report in question. He, therefore, prays that the First Information Report and the consequent charge-sheet be quashed and set aside.

6. The counsel for applicants has relied upon following judgments to support his contentions :

- i. **C. Muniappan & others Vs. State of Tamil Nadu, 2010 AIR (SC) 3718.**
- ii. **Hemant Soren Vs. State of Jharkhand and others, Cr.MP No.1861/2022.**
- iii. **Parveen Amanullah Vs. State of Bihar, 2017 (3) PLJR 101.**

iv. **Charanjit Singh @ Channi Vs. State of Punjab, CRM M 453/2023.**

7. Per contra, learned Additional Public Prosecutor for the non-applicant while opposing the contentions advanced by the learned counsel for the applicants states that the prosecution agency has completed the investigation and seized the CCTV footage. It has also recorded statement of witnesses wherein active participation of the present in commission of offence can be seen. The statements of witnesses clearly indicates act of the present applicants and, therefore, according to him there is no case made out for quashing of the First Information Report and the charge-sheet.

8. Section 223 of the Bharatiya Nyaya Sanhita, 2023 states as under :

223. Disobedience to order duly promulgated by public servant. -

(1) Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

(a) shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to two thousand five hundred rupees, or with both;

(b) and where such disobedience causes or tends

to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

Explanation: *It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.*

Illustration:

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

9. This section correspondence to Section 188 of the Indian Penal Code. There is a clear cut bar for taking cognizance of the offence by virtue of Section 215 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (old Section 195 of the Criminal Procedure Code). It is apparent from perusal of Section 223 of the Bharatiya Nyaya Sanhita, 2023 that for any act to constitute an offence under this particular statute, there must be an order lawfully passed by the public servant duly authorized in that regard. The said order must be directed towards a person directing him to abstain from a certain act or to take certain order with certain property in his possession or under his management. The order must be in

knowledge of the person to whom it is directed, who despite having the knowledge that his disobedience of the order been or is likely to cause harm disobeys such order, resulting in the obstruction, annoyance or injury. The cognizance of this offence has been specifically barred by virtue of Section 215 of the Bharatiya Nagarik Suraksha Sanhita, 2023. As enumerated by the Hon'ble Supreme Court in the case of **M.S. Ahlawat Vs. State of Haryana and another**, reported in **2000(1) SCC**, wherein the Supreme Court considered the provisions at length and observed in para 5 that the said provisions are mandatory and no Court has jurisdiction to take cognizance of any offences mentioned therein, unless there is a complaint in writing as required under that Section. The said principle is also find a place in the case of **Daulat Ram Vs. State of Punjab**, reported in **AIR 1962 SC 1206**. Thus, in view of the dictum of the Supreme Court, it is clear that provisions of Section 215 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (old Section 195 of the Criminal Procedure Code) are mandatory in nature. In the instant case, no such complaint by the concerned public servant or any officers subordinate to him as contemplated under Section 215 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is placed on record. It is, therefore, apparent that no offence punishable under

Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is made out in view of the specific bar of Section 215 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

10. Furthermore, the offence under Section 189(2) (i.e. old Section 141 of the Indian Penal Code) regarding unlawful assembly is also not made out since the assembly of the applicants cannot be said to be “an unlawful assembly” as there is no common object as contemplated under the said Section. Furthermore, as far as offence under Section 135 of the Maharashtra Police Act is concerned, it is not clear from the reading of the First Information Report in question regarding which Section i.e. 37 39 or 40 is alleged to be breached. Even otherwise, the contingency as mentioned in the First Information Report and the consequent charge-sheet do not find a place either in these Sections. We, therefore, of the considered view that continuance of proceeding against the applicants would amount to an abuse of process of Court. Thus, the situation would squarely fall within the laid down parameters of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, reported in **AIR 1992 SC 604**,

1. 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.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. We, therefore, pass the following order :

ORDER

(i) The application is allowed.

(ii) First Information Report in Crime No.289/2024 dated 12.11.2024 and the Charge-sheet No.13/2025, registered with non-applicant No.1 for the offences under Sections 189(2) and 223 of the Bharatiya Nyaya Sanhita, 2023 read with Section 135 of the Maharashtra Police Act is quashed and set aside.

(iii) The application is disposed of in above terms.

(Nandesh S. Deshpande, J.)

(Urmila Joshi-Phalke, J.)