



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

CRIMINAL APPLICATION (APL) No.1130 OF 2025

Sunil s/o.Umakant Kuril,
Aged about 34 years,
Occupation : Private,
R/o.Ramnagar, Telankedi,
Post : Ambazari, Nagpur : APPLICANT

...VERSUS...

1. State of Maharashtra,
Through its Police Station Officer,
Police Station Ambazari, Nagpur.
2. Anil s/o. Ramji Kove,
Aged about 52 years,
Occupation : Service,
R/o. Police Constable attached to
Ambazari Police Station. : NON-APPLICANTS

Mr. S.R.Kadam, Advocate for Applicant.
Ms. Sneha Dhote, APP for Non-applicant No.1.

**CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.**
DATE : 03rd SEPTEMBER, 2025.

ORAL JUDGMENT : (Per : Urmila Joshi-Phalke)

1. Rule. Rule made returnable forthwith.
2. Heard finally by consent of learned counsel appearing
for the parties.

3. The present application is preferred under Section 482 of the Code of Criminal Procedure (Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023) for quashing and setting aside the charge-sheet bearing No.861/2018 dated 28.11.2018 and subsequently registered as Summary Criminal Case No.28325/2018 pending in the Court of Joint Civil Judge Junior Division and Judicial Magistrate First Class, Nagpur, arising out of Crime No.287/2018, registered under Section 160 of the Indian Penal Code.

4. Brief facts which are necessary for the disposal of the application are as under :

The First Information Report bearing Crime No.287/2018 was registered under Section 160 of the Indian Penal Code at Ambazari Police Station on the basis of report lodged by Anil Ramji Kove alleging that a verbal and physical altercation took place between two groups outside the Police Station. It is the case of the prosecution that the applicant was part of the said group involved in the alleged altercation which was preceded by stare down and exchange of words between the parties standing near the Police Station. The alleged incident took place on the road adjoining Police Station at a public place and, therefore, due to the

act of the present applicant and the other co-accused the public peace was disturbed which is one of the ingredients of the offence of affray under Section 160 of the Indian Penal Code. After completion of the investigation the charge-sheet was filed bearing No.861/2018 before the Judicial Magistrate, First Class registered as Summary Criminal Case No.28325/2018.

5. Heard learned counsel for the applicant, who submitted that in fact the ingredients of the offence are not made out and, therefore, there is no prima facie material to show that the present has committed the offence of affray. He has invited our attention towards the definition of affray given under Section 159 of the Indian Penal Code and also towards the statement of the witnesses and submitted that no single statement is recorded by the Investigating Officer of a public which will show that there was a disturbance of public peace and, therefore, the applicant has set to have committed offence of an affray. Thus, the applicant has contributed to disturb the public peace is not at all fulfilled and, therefore, no offence is made out against the present applicant. In such a situation forcing the present applicant to face the trial would be the abuse of the process of law and, therefore, the charge-sheet and entire proceedings deserves to be quashed and set aside.

6. Learned Additional Public Prosecutor for the non-applicant No.1 strongly opposed for the same and invited our attention towards the statement of the witnesses and submitted that the entire incident has occurred on the public road at a public place which is sufficient to show that there was a disturbance of public peace and, therefore, the offence is made out as far as whether the act of the present applicant was sufficient to ascertain that there was a disturbance of public peace or not is a matter of evidence. At this stage sufficient material is on record to show the involvement of the present applicant and, therefore, the application deserves to be rejected.

7. We have considered the rival submissions of both the parties. The informant is a Police Constable who has interfered with the scuffle of the two groups which took place in front of the Police Station. The applicant was involved in fighting with the other persons. Immediately the informant and other staff of the Police Station attempted to intervene and pacify the said quarrel. However, they ignored the same and involved in further proceeding of assaulting to each other. Therefore, two ingredients of Section 159 of the Indian Penal Code are satisfied that there were more than two persons and there was fighting in the public place.

However, the third ingredient of Section 159 of the I.P.C. was absent, as it can be gathered from the material placed before us and, therefore it cannot be said that the applicant has committed the offence of affray.

8. Learned counsel for the applicant has placed on record a decision of this Court in Criminal Application (APL) No.517/2025 wherein this Court has considered the decision of the Hon'ble Apex Court in the case of **Mahant Kaushalya Das Vs. The State of Madras**, reported in **AIR 1966 SC 22** wherein as held as under :

“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.”

9. Present case is also identical. The entire record does not show that there was disturbance to the public peace. The

statements of the public are also not recorded. The contents of the F.I.R. as well as the statements of the witnesses which are required during the investigation as the material in the charge-sheet depicts that the material is not sufficient to attract the ingredients of Section 159 of the I.P.C. and, therefore, it cannot be said that the applicant has committed an offence punishable under Section 160 of the Indian Penal Code. The law laid down in the case of **State of Haryana Vs. Bhajan Lal**, reported in **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 as under :

“(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;”

10. Therefore, considering above facts and circumstances, a case is made out to quash and set aside the charge-sheet. Hence, we proceed to pass following order :

ORDER

- (i) Criminal Application is allowed.
- (ii) The charge-sheet bearing No.861/2018, dated 28.11.2018, out of the First Information Report

No.287/2018, registered with Police Station Ambazari, Nagpur for the offences punishable under Section 160 of the Indian Penal Code alongwith Criminal proceeding bearing Summary Criminal Case No.28325/2018 pending on the file of the learned 14th Joint Civil Judge Junior Division and Judicial Magistrate First Class, Nagpur is hereby quashed and set aside.

(iii) Rule is made absolute in the abovesaid terms.

(iv) No order as to costs.

(Nandesh S. Deshpande, J.)

(Urmila Joshi-Phalke, J.)

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