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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2082 OF 2025
IN
CRIMINAL REVISION APPLICATION NO.74 OF 2025**

Shri Narsingh Bhujangrao Gude

..Applicant

Vs.

State of Maharashtra

..Respondent

Mr. Ninad Muzumdar a/w Radhika Mundada and Tej Kenia for Applicant.
Mr. B.B. Kulkarni, APP for Respondent-State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th APRIL, 2026.

P.C. :

1. By this application, the Applicant is seeking stay to the conviction imposed on the Applicant by Order dated 10th August 2022 by the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai in CC No.2029/PW2/2016 and confirmed by Order dated 18th February 2025 by the Sessions Court, Dindoshi in Criminal Appeal No. 272 of 2022.

2. It is the case of the prosecution that on 26th January 2016 at about 23.30 hrs., the Applicant had sent obscene messages and obscene photos on the mobile of the Complainant.

3. In investigation, it revealed that said mobile number belongs to the Applicant and he had sent obscene messages to the complainant, who

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is lady and was Corporator in Mumbai Municipal Corporation at that time.

4. To prove the case, the prosecution has examined four witness i.e. P.W-1, Riddhi Bhaskar Khursange, the Informant, PW-2, Bhaskar Namdeo Khursange, husband of the informant, PW-3- Manoj Kapil Saha panch and PW-4 Uday Balkrishna Rajeshirke, Investigating Officer.

5. Considering the evidence on record, the learned Magistrate convicted the Applicant for the offences under Sections 509 of the Indian Penal Code (for short "IPC") read with 67, 67(A) of the Information Technology Act and sentenced to suffer three months simple imprisonment with fine of Rs.3,000/- and in default further imprisonment of 15 days.

6. The Applicant challenged the said order before Sessions Court. Learned Sessions Court has confirmed the order. The said order is under challenge. The Applicant is the employee of the Corporation and he is facing termination. Hence, this application is filed for stay of conviction.

7. It is the contention of the learned Counsel of the Applicant that though the mobile of the Applicant was seized, SIM card was not seized. Learned Counsel further submitted that the panch witness is turned hostile, in whose presence mobile of the applicant was seized. Learned Counsel further submitted that no witness from Vodafone mobile company is examined to prove the letter issued by the Vodafone company. The letter issued by Deputy Superintendent of Police is proved through the

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Investigating Officer, which is not permissible as per the Evidence Act. But these facts are not considered by the learned Sessions Court. It may take time to dispose of the Criminal Revision Application filed by the Applicant. Applicant is facing termination and requested to stay the conviction.

8. It is the contention of the learned APP that the Applicant works as Sub-Engineer in Mumbai Municipal Corporation. The Informant was the Corporator. Applicant sent her obscene messages. In investigation, it revealed that the mobile number belongs to Applicant from whom obscene messages were sent to the Informant. The mobile of the Applicant seized by preparing panchanama in presence of panchas.

9. The investigation officer has produced the letter of Vodafone company showing that the mobile number belongs to the Applicant from whom obscene messages were sent to the First Informant. The prosecution has proved its case beyond doubt. There are concurrent findings against the Applicant. The First Informant has no reason to involve the applicant in false case and requested to reject the Application.

10. I have heard both learned Counsel. Perused the impugned Order. Prosecution case is mainly relied on seizure of mobile from the possession of the Applicant and the mobile number. The letter of Vodafone Company stating that the mobile number involved in the crime belongs to the Applicant.

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11. It is significant to note that the panch witness turned hostile, in whose presence mobile of the Applicant was seized. In his cross-examination also, he nothing stated against the Applicant. The prosecution has not examined the employee of Vodafone company to prove that the letter was issued by their company and number belongs to the Applicant.

12. It is settled law that the person who issued letter has to examine to prove the contents of the said letter. But this fact is not considered by the learned Appellate Court. Applicant is the employee of the Corporation. If his conviction is not stayed, he may face termination. It may take time to dispose of the Application filed by the Applicant. In view of above, I pass following Order :

Order

- (i) Application is allowed.
- (ii) Conviction imposed on the Applicant by Order dated 10th August 2022 by the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai in CC No.2029/PW2/2016 and confirmed by Order dated 18th February 2025 by the Sessions Court, Dindoshi in Criminal Appeal No. 272 of 2022 is stayed.

(SHIVKUMAR DIGE, J.)