



Judgment

28 apl1593.25.odt

1

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

CRIMINAL APPLICATION APL NO.1593/2025

Shubham s/o Dinkar Gawai,
aged about 25 years,
occupation- labour,
r/o Chandmari, tahsil Khamgaon,
district- Buldhana. **Applicant.**

:: VERSUS ::

1. State of Maharashtra,
Through Police Station Officer,
Police Station Khamgaon,
Tahsil Khamgaon, district Buldhana.

2. Rajesh s/o Janardan Dali,
aged about 37 years,
occupation- business,
r/o Sotalpura, tahsil Khamgaon,
district- Buldhana. **Non-applicants.**

=====

Shri Sagar Katkar, Counsel for the Applicant.
Shri Nikhil Joshi, APP for the Non-applicant No.1/State.

=====

CORAM : **URMILA JOSHI-PHALKE, J.**

DATE : **02/04/2026**

JUDGMENT

1. Heard. **Admit.** Heard finally by consent.

.....1/-

2

2. By this application, the applicant is seeking quashing of FIR in connection with Crime No.305/2023 registered with non-applicant No.1 police station for offences under Sections 143, 147, 149, 323, 324, 504, and 506 of the IPC and consequent proceeding arising out of the same bearing RCC No.28/2024 pending before learned District and Additional Sessions Judge, Khamgaon.

3. The crime is registered on the basis of a report lodged by non-applicant No.2 (the complainant) on allegations that on 4.6.2023, at about 6:00 am, when he had been to his agricultural field, there was a dispute between the present applicant and other co-accused and he was assaulted by one of accused Jayesh Dali by giving a blow on his lips and the present applicant has made video recording of the said incident. On the basis of the said report, the police have registered the crime against the present applicant.

3

4. After registration of the crime, investigation was carried out and after completion of the investigation, chargesheet was submitted.

5. Learned counsel for the applicant submitted that regarding the said incident, on the same day, the complainant has approached the police station and he has not uttered a single word as to presence of the present applicant at the spot of the incident. Subsequently, after fifteen days, name of the present applicant is mentioned. Thus, the present applicant is implicated falsely after thought. He further submitted that no specific role is attributed to the present applicant. In view of that, no prima facie case is made out against the present applicant. As such, the application deserves to be allowed.

6. Per contra, learned APP for the State has strongly opposed the said contentions and submitted that considering statements of eyewitnesses, a specific role is attributed against the present applicant and, therefore, a prima facie case is

4

made out against the present applicant. As such, the application deserves to be rejected.

7. Having heard both sides and perused and the entire investigation papers, it reveals that allegations against the present applicant are that he was a member of an unlawful assembly and in pursuance of the said assembly, they entered into the agricultural field of the complainant and assaulted him. On the basis of the said report, the police have registered the crime. Admittedly, there is no mention about the name of the present applicant in the first report filed on 4.6.2023. Thereafter, second report was filed on 17.6.2023. After registration of the crime, statements of various witnesses are recorded by the Investigating Officer. Statements of Prashant Dali, Rajesh Dali, and Sanjay Dali show involvement of the present applicant in the alleged offence. Statement of Mohan Dali also shows presence of the present applicant at the spot of the incident.

5

8. Section 149 of the IPC has its foundation on constructive liability which is the *sine qua non* for its operation. The emphasis is on the common object and not on common intention.

Presence in unlawful assembly of the present applicant reveals from various statements of witnesses.

The said Section states that every member of an unlawful assembly guilty at the time of committing of an offence. The Section creates a vicarious liability for unlawful acts committed in pursuance of the common object by any other member of the said assembly. The basis of the constructive liability is mere membership of such unlawful assembly, with requisite common object or knowledge, which is apparent at this stage.

9. Apart from the above, charge is already framed and trial is at the verge of commencement.

10. Considering all these aspects above, prima facie case is made out against the present applicant and, therefore, the application deserves to be rejected and the same is **rejected**.

Application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!