

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 569 OF 2019

Amol S/o Marotirao Talwadkar
Age : 35 years, Occ : Advocate,
R/o Kranti Nagar, Banshelki Road,
Udgir, Tq. Udgir, Dist. Latur.

..APPLICANT

-VERSUS-

1. The State of Maharashtra
Through the Investigating Officer,
In Crime No.0033/2019, registered with
Udgir City Police Station,
Tq. Udgir, Dist. Latur.

2. Raju S/o Murlidhar Nagre
Age : 31 years, Occ : Service,
R/o Regional Transport Office,
Latur, Dist. Latur.

..RESPONDENTS

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Mr.M.S. Deshmukh h/f Mr.U.L. Momale, Advocate for
the applicant.

Mr.K.S. Patil, APP for respondent nos.1 and 2.

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CORAM : RAVINDRA V.GHUGE

AND

B.U.DEBADWAR, JJ.

RESERVED ON : 01st April, 2021

PRONOUNCED ON : 09th April, 2021

JUDGMENT (Per B.U. Debadwar, J.):

1. By this application, the applicant
prays to quash F.I.R. No.0033/2019, dated 31st
January, 2019, registered against the
applicant under sections 353, 504 and 506 of

the Indian Penal Code, 1860, (In short, "the I.P.C.) at Udgir City Police Station, Udgir, Dist.Latur.

2. Heard Mr.M.S. Deshmukh h/f Mr.U.L. Momale, the learned Advocate for the applicant and Mr.K.S. Patil, the learned Additional Public Prosecutor for respondent nos.1 and 2.

3. Facts giving rise to application, in nutshell, are as under.

a) Respondent No.2 is a government servant, holding the post of R.T.O. Inspector, Regional Transport Office, Latur. Whereas, the applicant is an Advocate by profession, practicing at Udgir and Latur. Respondent No.2 was a Head of Flying Squad, constituted for the purposes of detection of crimes under the provisions of the Motor Vehicles Act, 1988 (In short, "M.V. Act").

b) On 13.01.2019, at about 7 a.m., he, along with two other members of the Flying Squad, viz: Baliram Dnyanoba Shinde and Umesh Dashrath Durande, had left the office and started moving with office vehicle on Shirur Tajband to Udgir road, for detection of vehicles, being run on the road, in breach of

the provisions of the M.V. Act. After detecting many cases, at about 9 p.m., they reached Umachauk, Udgir and noticed one trailer bearing MH-04 EL 4111 coming from Ahmedpur and proceeding towards Bidar and a huge ODC machine was loaded in the said trailer. Respondent no.2 and his associates called upon the trailer driver to show the R.T.O. papers, after stopping the trailer. Since, trailer driver did not show the R.T.O. papers, as directed to him, they diverted the trailer and took the trailer to Udgir Bus Depot, Udgir.

c) Soon after reaching the S.T. Bus Depot, the applicant rushed there, introduced himself as a practicing Advocate and called upon respondent no.2 to leave the trailer without taking any action or registering any crime under the provisions of M.V. Act. He stated the same in a threatening voice. When respondent no.2 refused to leave the trailer without registering case for breach of provisions of M.V. Act, the applicant became furious, called upon one Alim Shaikh, resident of Udgir. Alim Shaikh collected a mob. Upon collecting many pedestrians and persons from the said area, the applicant not only argued with respondent no.2, but also

hurled abuses and facilitated the trailer driver to run away from the place i.e. S.T. Depot, Udgir where the trailer was detained. Upon which, the applicant left the spot and went away.

d) After some time, associates of respondent no.2 searched out and brought trailer driver Sayyed Akbar to S.T. Depot, Udgir. He refused to sign Challan no.637284 and take copy of the same. As such, the trailer was detained.

e) Since, the applicant had prevented and used criminal force to deter respondent no.2, a public servant, from discharging his duty, on 14.01.2019, respondent no.2 informed the same in writing to Regional Transport Officer, Latur and also to the Transport Commissioner, Mumbai and sought the sanction for lodging FIR against the applicant. Soon after receiving the sanction, respondent no.2 approached the Udgir City Police Station, Udgir and lodged the aforesaid FIR.

4. While taking us through the FIR, Mr.Mahesh Deshmukh, the learned Advocate for the applicant, vehemently argued that the averments/allegations made in the FIR are false, baseless and an after thought. They do

not disclose a cognizable offence justifying an investigation by the competent Police Officer. The applicant had not at all, either prevented or deterred respondent no.2 and his associates from discharging their lawful duty. The averments/allegations in FIR are not at all sufficient to make out a case, either under section 353 or 504 and 506 of the IPC. There is no, prima facie, evidence for proceeding against the applicant. There is a delay of 17 days caused in lodging FIR. The averments made in the FIR, pertaining to sanction obtained from higher authorities, are false and baseless averments, not supported by any evidence. Even after getting alleged sanction, the FIR was not lodged immediately. This inordinate delay, either of 17 days or 9 days, prima facie, makes it clear that the FIR sought to be quashed is false and concocted one.

5. The applicant had no reason to cause obstructions and deter respondent no.2 in discharging duty. Being an Advocate on behalf of the trailer driver, the applicant was trying to satisfy respondent no.2, as to how the trailer driver has not committed breach of any of the provisions of the M.V. Act.

Being annoyed by the same, respondent no.2 has lodged false FIR, which is not at all sufficient to, prima facie, satisfy the ingredients of either section 353 or 504 and 506 of the IPC. Therefore, it would not be proper and legal to drag the applicant to face the prosecution, which ultimately will result into his acquittal. In support of his submissions, Mr.Deshmukh has placed his reliance on the judgment of this Court in the case of ***Kundan S/o Khanderao Dhande Vs. Vasudeo Nivruti Fegde, (2017 All MR (Cri) 5272.***

6. Per-contra, Mr.K.S. Patil, the learned Additional Public Prosecutor vehemently argued that in the relevant period, respondent no.2, along with his staff, was discharging his lawful duty. The averments made in the FIR are clear, cogent and sufficient to make out a prima facie case under section 353 of the IPC. The incident took place at about 9 p.m. on 13.01.2019. Immediately after satisfaction that the trailer driver was not possessing the requisite permits and papers, respondent no.2 prepared Challan in prescribed proforma, offered copy of the said Challan to the

trailer driver and requested him to sign on the original Challan, after reading contents therein. The trailer driver refused to sign the original Challan and accept a copy thereof. The applicant, on behalf of trailer driver, not only caused interference in due discharge of his official duty, but also hurled abuses and threatened him. Next day morning, respondent no.2 informed the said fact to his higher authority i.e. Regional Transport Officer at Latur and submitted the Challan with his office. Soon thereafter, the report was forwarded to the Transport Commissioner, Mumbai, for issuance of sanction and shortly, after receiving the sanction, the FIR came to be lodged. Delay has been properly explained in the FIR.

7. According to Mr.Patil, the learned Additional Public Prosecutor, it is settled position of law that if the averments made in the FIR on their face value constitute ingredients necessary for making out an offence, then the FIR cannot be quashed under section 482 of the Code of Criminal Procedure. Here, in this case, the FIR at its face value fulfills the necessary ingredients of sections 353 and 506 of the IPC.

Therefore, the prayer for quashing the same under section 482 of the Code of Criminal Procedure cannot be entertained. The arguments pertaining to merits and fate of the case, cannot be considered. Therefore, almost all the arguments advanced by the learned Advocate for the applicant, which are out of purview of the averments made in the FIR, holds no water. The conduct of the applicant, who is an Advocate by profession, prima facie, speaks volumes that he has used criminal force to deter respondent no.2, who was public servant, from discharging his duty. Therefore, the application is liable to be rejected.

8. In the light of aforesaid submissions, we have carefully gone through the FIR and the papers annexed thereto, viz:- copy of the Challan and Receipt.

9. The incident took place when respondent no.2 while discharging his lawful duty, detained the trailer no.MH 04 E 4111, and it's driver failed to furnish the necessary papers and permits, as directed to him. It is pertinent to note that the trailer owner willingly compounded all the offences under the M.V. Act, committed by his driver

and paid fine amount of Rs.39,950/- without raising any protest. This can be gathered very well from the copy of the compounding receipt annexed to the affidavit in reply submitted by respondent no.2. This act of the trailer driver demonstrates, as to how FIR to the extent of respondent no.2 detaining trailer and registering case under the M.V. Act against the trailer driver, is true.

10. Further part of the FIR throws light on the act done by the applicant for defending the trailer driver. The FIR clearly demonstrates the role played by the applicant.

11. Sections 353, 504 and 506 of the IPC run as under :-

Section 353. Assault or criminal force to deter public servant from discharge of his duty.- Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which

may extend to two years, or with fine, or with both.

Section 504. Intentional insult with intent to provoke breach of the peace.-Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 506. Punishment for criminal intimidation.- Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.- and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

12. The FIR speaks volumes that the applicant not only deterred respondent no.2

from discharging his lawful duty, but also used criminal force for preventing him from discharging lawful duty i.e. for releasing the trailer detained by him. For that purpose, he not only argued with respondent no.2 in indecent and rude language, but applicant went to the extent that when process of registering the N.C. case was going on, he assisted the trailer driver to run away. This act of the applicant speaks about his intention. The associate employees chased the trailer driver, caught him and brought him to the S.T. Depot and then process of Challan was completed. In such circumstances, it cannot be said that the averments made in the FIR do not constitute any of the offences, for which the applicant is charged. The aspect of delay, on which much stress was given by the Advocate for the applicant, cannot be considered while dealing with the application for quashing the FIR. That aspect would be dealt with at the time of trial. The averments in the FIR are not only sufficient to make out the case under section 353, but also under section 506 of the IPC.

13. In *Prof. R.K. Vijayasarathy and*

another Vs. Sudha Seetharam and another **{(2019) 16 SCC 739}**, the Hon'ble Apex Court while discussing the scope and ambit of section 482 of Code of Criminal Procedure, held as under :-

"9. Section 482 of the Code of Criminal Procedure saves the inherent power of the High Court to make orders necessary to secure the ends of justice. In Indian Oil Corpn. v. NEPC (India) Ltd, a two-Judge Bench of this Court reviewed the precedents on the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure 1973 and formulated guiding principles in the following terms : (SCC p.748, para 12)

12. ****

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while

examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution,

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

10. The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an

offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code."

14. In case at hand, the allegations/averments made in the FIR at their face value, prima facie, constitute offence under sections 353 and 506 of the IPC. The arguments advanced by the learned Advocate for the applicant are based upon merits. As ruled by the Hon'ble Supreme Court, the merits of the allegations cannot be examined while dealing with the application for quashing of the FIR under section 482 of the Cr.P.C. Therefore, on the basis of the arguments relating to the merits, the FIR, which prima facie makes out a case under section 353 and 506 of the IPC

cannot be quashed. Absolutely nothing is brought on record showing that the FIR came to be lodged with *mala fides* or malice. Respondent No.2 has no reason to lodge the false FIR against the applicant.

15. Respondent no.2 in his affidavit in reply very clearly stated that the applicant is in habit of making complaints against the officers of the R.T.O. office, Latur with malafide intention and ulterior motive. The details of the complaints made by the applicant have been given in the affidavit in reply. The copies of those complaints annexed to the affidavit in reply demonstrate details about the allegations, which applicant habitually used to make against the officers of the R.T.O. office, Latur. Affidavit in reply of respondent no.2 also speaks volumes that almost all the complaints made by the applicant have been closed by the Transport Commissioner, Mumbai, as no substance was found therein. Thus, the material brought on record by the respondents, prima facie, indicates the act done by the applicant set out in the FIR.

16. We have carefully gone through the judgment in **Kundan Khanderao Dhande Vs**

Vasudeo Nivruti Fegde (supra), relied upon by the learned Advocate for the applicant. The facts of the case in hand are some what different. In Kundan's case, the FIR came to be quashed mainly for non-compliance of section 186 of the IPC. Therefore, the ratio laid down in **Kundan's** case (supra) will not come to the rescue of applicant for claiming quashing of FIR.

17. After examining the FIR in its entirety, we are satisfied that the averments made therein constitute ingredients necessary for offence under sections 353 and 506 of the IPC. For the reasons discussed hereinabove, the FIR cannot be quashed. With this, we dismiss the application and vacate the interim relief dated 01/03/2019.

(B.U.DEBADWAR,J.)

(RAVINDRA V. GHUGE,J.)

18. After pronouncement of the judgment, Mr.M.S. Deshmukh, the learned counsel for the applicant prayed for continuation of interim relief dated 01/03/2019 for four weeks.

19. Considering the reasons assigned for refusing to quash the FIR, in the judgment,

prayer for continuation of interim relief
dated 01/03/2019, is rejected.

(B.U.DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)

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