

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION (APL) NO. 1164 OF 2013

Laxminarayan Mishra ... Applicant.
Versus
The State of Maharashtra & Ors. ... Respondents.

Mr. S. J. Mishra i/b Mr. Jayesh Bhatt for the applicant.
Mr A. R. Kapadnis, APP for the Respondent-State.
Smt. Mandakini Narote, SPI, Gorai Police Station and Mr. Prakash Pawar, PI, Samatanagar Police Station present.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ**

DATED : 20th FEBRUARY, 2023

P.C.:

1. This is an application u/s 482 of Cr.P.C. with prayer for quashing of FIR No. 447 of 2013 registered with the respondent no. 2-police station upon a complaint lodged by respondent no. 3 pursuant to an incident occurred with respondent no. 4, a public servant.
2. The facts necessary for deciding the application are as under.
3. The applicant, a practicing advocate since 2006 claims that in the aforesaid crime he was falsely implicated, in which prosecution case against the applicant is as under.
4. The complainant - Pramod working as Police Naik with Samta

Nagar Police Station came across an incident on 18/09/2013 during Ganpati immersion wherein it is claimed that the applicant under the influence of liquor not only resisted the official act of respondent no 4-public officer but has conducted himself in most indecent manner thereby uttering certain objectionable words creating an impediment in the discharge of official duty.

5. The respondent no 4 was posted as police inspector for regulating law and order during procession of Ganapati immersion. The said officer was regulating the movement of heavy mob of around 2000 people. However, the applicant appears to have not co-operated but has conducted himself in such a manner which has resulted into registration of Crime No. 447 of 2013 punishable u/s. 353, 504 and 509 of IPC.

6. The applicant has sought quashing on the ground of false implication. He would urge that necessary ingredients of section under which he was booked are not satisfied. Mr. Mishra, learned counsel for the applicant would urge that even if the complaint is taken to be true, still it cannot be said that necessary ingredients of offence alleged u/s. 353, 504 and 509 of IPC are made out.

7. Mr. Mishra would urge that the applicant being a lawyer assures that he shall not conduct himself in the manner as has

been alleged anytime time in future. He further states that applicant has voluntarily deposited an amount of Rs.11,000/- with Maharashtra State Legal Services Authority so as to repent for his act as has been narrated in the FIR.

8. Learned APP would oppose the prayer based on the investigation papers.

9. According to him, the necessary ingredients of offence alleged can be very much inferred from the statement of witnesses. He would urge that the witnesses are not only public servants but also an independent witnesses. The independent persons have stated about the act of the applicant, which has led to registration of the offence.

10. We have appreciated the said submissions. The applicant is booked for an offence punishable under sections 353 viz. assault or use of criminal force to deter a public servant from discharge of his duty, section 504 - insult intended to provoke breach of the peace and section 509 - uttering any word or making any gesture intended to outrage the modesty of a woman, etc.

11. The perusal of the contents of FIR depicts that the applicant appears to have not used any physical force so as to deter a public servant from discharge of official duty. Rather the allegations are,

the applicant has not co-operated and has not acted in accordance with the instructions of the respondent no. 4, lady police inspector. The applicant has tendered his unconditional apology for the alleged act.

12. The fact remains that the applicant allegedly asked the lady police officer as to whether she intends to dance in the procession and has committed act of insulting public servant and has also by words spoken alleged to have tried to outrage the modesty of a woman. The fact remains that the prosecution has claimed that such act of the applicant was under the influence of liquor. There is no material to infer that the applicant was under the influence of liquor at relevant time.

13. Apart from above, words which are attributed to the applicant to have been used against the police officer cannot be claimed to be meant to outrage the modest of a woman or cannot be said to be with an intention to outrage the modesty of a woman.

14. The Apex Court in the matter of **Manik Taneja & Anr vs State of Karnataka & Anr.** decided on 20/01/2015 in **Criminal Appeal No. 141 of 2015** while dealing with the similar issue in paragraph no. 9 has observed thus:

"9. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made, prima facie, establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue. Where, in the opinion of the Court, the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may quash the proceeding even though it may be at a preliminary stage.

15. Apart from above, as regards satisfaction of ingredients of section 353 of IPC, the Apex Court in paragraph no. 12 has observed as follows:

"12. A reading of the above provision shows that the essential ingredients of the offence under Section 353 IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the respondents or used criminal force to prevent the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, that the ingredients of the offence under Section 353 IPC are not made out."

16. In the backdrop of aforesaid discussion and the law laid down by the Apex Court in the matter of *Manik Taneja* cited supra, it is quite apparent that the allegations made in the FIR are accepted/

uncontroverted. It does not prima facie establish commission of offence. This Court has already observed that offence under Section 353 cannot be inferred for want of necessary ingredients, so also there is no material to infer that there was intention on the part of the Applicant to outrage the modesty of a woman.

17. In the aforesaid background, there appears to be substance in the contentions of the applicant.

18. In that view of the matter, the application stands allowed in terms of prayer clause (a).

(R. N. LADDHA, J)

(NITIN W. SAMBRE, J.)