IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2081 OF 2021

1. Mohd. Bin Saeed Bin Kileb
(As per Court's order dated 01.10.2021, application of Applicant no.1 stands dismissed as withdrawn)

2. Mohd. Naushad Akram Shaikh,
Age 22 years, Occ: Business
R/o. Ekta Nagar, Pathri
Taluka Pathri
District Parbhani.

3. Shaikh Altaf Shaikh Hamid,
Age 40 years, Occ: Business
R/o. Indira Nagar, Pathri
Taluka Pathri
District Parbhani.

4. Shaikh Jamir Shaikh Ismail,
Age 28 years, Occ: Business
R/o. Fakrabad Mohalla, Pathri
Taluka Pathri
District Parbhani.

5. Aamer Bin Ali Zaidi,
Age 41 years, Occ: Business
R/o. Ajij Mohalla, Pathri
Taluka Pathri
District Parbhani.

6. Saeed Bin Mohd. Bin Kileb
Age 28 years, Occ: Business
R/o. As above ..Applicants

Versus

1. The State of Maharashtra
Through Police Station Officer,
Pathri Police Station, Pathri
District Parbhani.

2. Salam Bin Sale Bin Havel
Age 55 years, Occ: Agriculture
res. Of Ajij Mohalla, Pathri
Taluka Pathri
District Parbhani ..Respondents

Mr.S.S.Bora, Advocate for Applicants.
Mr.S.D.Ghayal, APP for Respondent no.1.
Mr.M.P.Tripathi, Advocate for Respondent no.2.

CORAM : ANUJA PRABHUDESSAI
AND R.M.JOSHI, JJ.
RESERVED ON : FEBRUARY 08, 2023
PRONOUNCED ON : 3rd MAY, 2023

JUDGMENT (PER ANUJA PRABHUDESSAI, J.) :-

. Heard finally with the consent of learned Counsel for the parties.

2. This is an application under Section 482 of the Code of Criminal Procedure for quashing Chargesheet No. 2 of 2020 filed before J.M.F.C. Pathri, which upon committal is registered as Sessions Case No.248 of 2022 pending on the file of Ld. Addl. Sessions Judge, Parbhani. The aforesaid proceedings arise from Crime No.362 of 2020 registered with Pathri Police Station, for the offences punishable under Sections 307, 353, 186, 201, 216, 504 and 506 read with Section 34 of

Indian Penal Code and Sections 3, 4 and 25 of the Indian Arms Act.

FACTS IN BRIEF :

3. The genesis of this crime was an altercation between the Applicant no.1 and Respondent no.2 over parking of a vehicle by the Applicant no.1 in front of the house of the Respondent no.2, which subsequently led to the Applicant no.1 abusing and threatening to cause death of Respondent No.2 followed by firing of revolver in air. The aforesaid incident occurred on 08.09.2020 at about 11.00 p.m. The Respondent no.2 lodged the First Information Report on 09.09.2020 at about 1.00 a.m., alleging that the Applicant no.1 had attempted to cause his death. The police officer on duty made an entry in the station diary and as per the instructions, the API attached to the concerned police station along with the police team, went to the place of the incident in search of the Applicant no.1. It is alleged that the Applicant no.2 did not allow to take search of the house and threatened by saying "दरवाजाला हात लावला तर याद राखा" **(**"*beware if you touch the door*") and prevented the police team from taking search of the house and thus, obstructed them from discharging their lawful duties. The police took the Applicant no.2 in custody and on taking his personal search, a *Khanjir* was found on his person. It is further stated that one sword was also recovered from the car which was parked near the house of the Applicant

no.2. It is further alleged that the Applicant nos.3, 4 and 6 assisted and aided the Applicant no.1 from fleeing away from the place of the incident by the car bearing registration No. MH-01-AX-4952; whereas, the Applicant no.5 is alleged to have removed the car bearing registration No.MH-21-C-2374 from the place of the incident and thus destroyed the evidence. On the basis of these allegations, the aforesaid crime came to be registered.

4. By order dated 1st October, 2021, this Court dismissed the application as against the Applicant No.1. The question for consideration is whether the allegations in the FIR disclose essential ingredients of the offences as alleged against the Applicant nos.2 to 6.

SUBMISSIONS:

5. Learned Counsel for the Applicant nos.2 to 6 submits that these Applicants are not involved in committing offence under Section 307 of Indian Penal Code. Learned Counsel for the Applicants further submits that the police officer had no authority to enter the house of the Applicants without registering an offence. It is submitted that the house search was illegal and cannot be construed as discharge of lawful duty. The Applicant no.2 had only questioned the police officer the reason for entering his house in the middle of the night. He had not used any

criminal force against the police and as such, the essential ingredients of the offence under Section 353 of I.P.C. are not made out. He further submits that the other allegations against the Applicants are totally baseless and unfounded.

6. *Per contra*, learned APP and learned Counsel for the Respondent no.2 submit that Respondent no.2 had reported that Applicant no.1 had fired a gun shot. Pursuant to the said information, the police visited the place of the incident after making an entry in the station diary. It is submitted that the material on record *prima facie* reveals that the Applicant no.2 had obstructed the police personnel from entering the house and thereby, prevented them from discharging their lawful duties.

7. It is contended that the fact that a weapon (*Khanjir*) was recovered from the respondent no.2 *prima facie* proves his involvement in commission of a cognizable offence. It is further submitted that the material on record reveals that the Applicants were involved in screening the Applicant no.1. Learned APP and learned Counsel for the Respondent no.2 submit that there is *prima facie* material to show the involvement of the Applicants in committing the offence and hence, this is not a fit case to quash the proceedings in exercise of the powers under Section 482 of the Code of Criminal Procedure.

PROVISION AND PROPOSITION OF LAW:

> **Section 482 Saving of inherent powers of High Court-** Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Code or otherwise to secure the ends of justice.

8. It is well settled that inherent power conferred under Section 482 has to be exercised sparingly and with caution only when such exercise meets the test laid down in the Section. In ***Musstt Rehana Begum vs. State of Assam & Anr. 2019 SCC Online SC 2163*** the Apex Court has considered the previous decisions and reiterated as under:

> *" 14. In Neeharika Infrastructure v. State of Maharashtra, a three-judge Bench of this Court analysed the precedent of this Court and culled out the relevant principles that govern the law on quashing of a first information report[4] under Section 482 of the Cr.PC. the Court held:*
>
> > *"57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:*
> >
> > *i) Police has the statutory right and duty under*

the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognized to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police

are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law,

more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

(emphasis supplied)

15. The parameters for quashing an FIR have been laid down in State of Haryana v. Bhajan Lal[5] *by a two-judge Bench of this Court. The Court has held:*

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad

kinds of cases wherein such power should be exercised.

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and

continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(emphasis supplied)

16. In State of Andhra Pradesh v. Golconda Linga Swamy[6], a two-judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:

"5…..Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the

materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

6. In R.P. Kapur v. State of Punjab [AIR 1960 SC 866 : 1960 Cri LJ 1239] this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant

> *to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death…..”*
>
> *(emphasis supplied)*

FINDINGS & REASONS:

9. Having perused the records and on considering the submissions advanced by learned Counsel for the respective parties, and the guidelines laid down by the Apex Court, in our considered view, the FIR and the other material, which forms part of the charge sheet, do not, *prima facie*, disclose cognizable offence against Applicant nos.2 to 6.

10. The aforestated crime was registered pursuant to the FIR lodged by the Respondent no.2. He had alleged that on 08.09.2020 at about 11.00 p.m. there was an altercation between him and the Applicant no.1 over parking of the vehicle. Respondent No.2 has alleged that in the course of the quarrel the Applicant No.1 fired a gunshot in the air. The FIR does not indicate that Applicant nos.2 to 6 were present at the place of the incident or that they were involved in any manner in the alleged incident of firing. The allegation against the Applicant no.2 is that he had prevented the police personnel from entering the house and discharging their lawful duties. Hence the Applicant no.2 is alleged to have committed offence under section 186 and 353 of the Indian Penal Code.

11. Section 186 of the Indian Penal Code read thus:-

> "**Section 186. Obstructing public servant in discharge of public functions.**
> Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extent to three months, or with fine which may extend to five hundred rupees, or with both.

12. Section 353 of the Indian Penal Code reads thus:

> **" 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. "

13. Sections 186 and 353 aim at protecting public servant and safeguarding his authority by prescribing punishment for causing obstruction to discharge of his official duties. Section 186 envisages mere obstruction to a public servant in the discharge of his public function, whereas the essence of Section 353 is assault or use of criminal force against the public servant, with an intent to deter him from

discharging his official duties. Hence, the core question for consideration is whether the Applicant No.2 had obstructed the police personnel from discharging the lawful duties.

14. In this regard, the affidavit-in-reply filed by Ganpat Rahire, the Police Inspector, Pathri reveals that the Respondent No.2 had been to Pathri Police Station on 09.09.2014 at about 01:14 a.m., and reported that the Applicant No.1 had fired gun shots. It is stated that Shailendra Murkute, the Police Station Officer on duty made an entry in the Station Diary No.002 and reported the incident to the Assistant Police Inspector – Balaji Tippalwad. It is stated that as per the instructions, API – Jadhav with other police personnel proceeded to the spot of the incident in search of the Applicant No.1, whose house was situated in the same locality. It is stated that the accused no.1 was sought to be traced/arrested after verifying the authenticity of the information given by the Respondent No.2. It is alleged that the Applicant No.2 did not allow the police personnel to take house search and thereby obstructed them from discharging their lawful duties.

15. It is the contention of the learned Counsel for the Applicants that the police personnel had sought to enter the house in the middle of the night without complying with mandatory provisions of Section 165.

He submits that non compliance of mandatory safeguards of Section 165 renders the search illegal, and such illegal search cannot be construed as discharge of lawful duty. He has relied upon the decision of the Apex Court in ***State of Rajasthan v/s. Rehman AIR 1960 SC 210,*** and the decision of the Division Bench of this Court in ***Dnyaneshwar v/s. The State of Maharashtra and ors. Manu/MH/3334/2019*** .

16. It may be mentioned that Section 165 of Cr.P.C. empowers an Officer-in-Charge of a police station or an Investigating Officer to make a search without warrant subject to certain safeguards. The scope and ambit of this section was considered by the Hon'ble Supreme Court in State of Rajasthan Vs. Rehman (supra). In the said case, the Deputy Superintendent of Central Excise had proceeded to search the house in view of information about cultivation of tobacco and non-payment of excise duty payable thereon. He was obstructed from making a search, in view of which offence under Section 353 IPC was registered. While setting aside the conviction the Hon'ble Supreme Court observed that the power of search given under Chapter XIV is incidental to the conduct of investigation the police office is authorized by law to make. It is held that "*Under Section 165 of Cr.P.C., four conditions are imposed :- (i) the police officer must have reasonable ground for believing that anything necessary for the purposes of an investigation of an offence cannot, in his*

opinion, be obtained otherwise than by making a search, without undue delay; (ii) he should record in writing the grounds of his belief and specify in such writing as far as possible the things for which the search is to be made; (ii) he must conduct the search, if practicable, in person; and (iv) if it is not practicable to make the search himself, he must record in writing the reasons for not himself making the search and shall authorize a subordinate officer to make the search after specifying in writing the place to be searched, and, so far as possible, the thing for which search is to be made. As search is a process exceedingly arbitrary in character, stringent statutory conditions are imposed on the exercise of the power."

17. In Dnyaneshwar (supra) numerous crimes were registered against several persons for possessing fire arms. The Petitioner had criminal antecedent and his house was searched on the basis of secret information relating to possession of fire arms. The Petitioner had claimed compensation on the ground that house search at night was illegal and resulted in infringement of his privacy. The Division Bench of this Court relied upon the decision of the Apex Court in Rehman (supra) and held that search which was conducted without complying with the safeguards was illegal and in breach of fundamental rights and thus ordered payment of compensation of Rs.25,000/-.

18. It may be noted that section 165 of Cr.P.C. empowers the specified police officer to make a search in the course of an investigation, when there are reasonable grounds for believing that anything necessary for the purpose of an investigation would be found in such place. In the instant case, the police officer had not conducted search under section 165 of Cr.P.C. The records reveal that the concerned police personnel had received information that the Applicant No.1 was involved in firing gunshot. Entry in this regard was made in the Station Diary and the matter was reported to the superior officer, and as per the instructions, the police team had proceeded to the house of the Applicant No.2 to trace the Applicant No.1.

19. It is to be noted that Chapter V of Cr.P.C. deals with the powers of arrest of a person and the safeguards which are required to be followed by the police to protect the interest of the accused person. Section 41confers powers on a police officer to arrest any person without a warrant. Clause (ba) of Section 41 in particular authorizes a police officer to arrest a person against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police office

has reason to believe on the basis of that information that such person has committed the said offence. Sub-section (1) of Section 47 confers powers on the police officer having authority to arrest, to enter any house or place to arrest a person, when he has reason to believe that the person who is sought to be arrested has taken refuge or is within the confines of such house or place. This Section also casts a duty on the person residing in or in charge of such house or place to allow free ingress to the police officer and afford all reasonable facilities for a search therein. Sub-Section (2) of Section 47 enables the police officer to use necessary force to enter such place when ingress to such place is obstructed after notifying his authority, purpose and demand of admittance. The proviso to this section makes it clear that if such apartment is in the actual occupation of a female, who according to custom does not appear in public, the police officer before entering the premises is under an obligation to give notice to such female to withdraw herself from the place/premises.

20. The facts on record reveal that the Respondent No.2 had reported that the Applicant No.1 had threatened to cause his death and fired gunshots in the air. Hence, the police officer had reason to believe that the Applicant no.1 is involved in committing a cognizable offence which is punishable with imprisonment for a term extending more than

seven years. He had authority to arrest without warrant. He had proceeded to the house of the Applicant No.2 to effect the arrest of Applicant No.1 after making necessary entry in the station diary. The fact that the police team had visited the house without registering the crime would not be relevant as Section 41 as well as 47 confers wide powers on the police to act swiftly even on credible information and reasonable suspicion for prevention or detection of cognizable offence. Furthermore, visiting the house during night hours in search of the Applicant No.1, who was sought to be arrested in a cognizable offence, punishable with imprisonment of more than seven years, would not per se render the action illegal, particularly when the provision does not impose such restriction. The only restriction imposed by proviso to Section 47(2) is to issue notice to withdraw when the apartment or the premises is in the actual occupancy of a female, who according to the custom does not appear in public. It is not the case of the Applicants that the police personnel had acted in contravention of the provision under section 41 and 47 of the Code to render the visit to the house of the Applicant No.2 illegal. We thus hold that the police team had visited the house of the Applicants in discyarge of their lawful duty.

21. The next question which follows is whether the Applicants had obstructed the police personnel in discharging their lawful duty and thereby committed offences under sections 186 and 353 of the Indian

Penal Code. As noted above, sections 186 and 353 relate to two distinct offences. The distinction between these two provisions has been explained by the Apex Court in ***Durgacharan Naik & Ors. vs. State of Orissa, 1966 AIR 1775.*** In the said case, the charge under section 353 as well as 186 of IPC was based on the same facts. It was contended that since the prosecution for offence under section 186 was barred under section 195 of the Cr.P.C., conviction under section 353 would tantamount to a circumvention of the requirement of section 195 (i) of the Cr.P.C. and hence, vitiated in law. The Apex Court while dispelling these submissions emphasized that ' … *Sections 186 and 353, Indian Penal Code relate to two distinct offences, and while the offence under the later section is a cognizable offence, the one under the former section is not so. The ingredients of the two offences are also distinct. Section 186, Indian Penal Code is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions, but under Section 353, Indian Penal Code the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Ch. X of the Indian Penal Code dealing with Contempts of the lawful authority of public servants, while S. 353 occurs in Ch. XVI regarding the offences affecting the human body. It is well established that S.195 of the Criminal Procedure Code does not bar the trial of an*

accused person for a distinct offence disclosed by the same set of facts, but which is not within the ambit of the said section."

22. In ***State of U.P. vs. Suresh Chandra Shrivastava & Ors. 1984 AIR 1108***, the Apex Court has reiterated that "*the law is now well settled that where an accused commits some offences, which are separate and distinct of those contained in Section 195, Section 195 will affect only the offences mentioned therein under such offences form integral part so as to amount to offences committed as a part of the same transaction in which case, the other offences would fall within the ambit of Section 195 of the Code*".

23. It is pertinent to note that Section 195(a)(i) of the Code of Criminal Procedure provides that no court shall take cognizance of any offence punishable under Section 172 to 188, except on the complaint in writing of a public servant concerned, or of some other public servant to whom he is administratively subordinate. A plain reading of Section 195 would indicate that jurisdiction of the court to take cognizance of an offence under Section 186 is specifically barred except on a complaint in writing of the public officer concerned, or some other public servant to whom he is administratively subordinate. Section 195, which contemplates the complaint in writing by the public servant concerned, is mandatory in character and cognizance of offence mentioning in the said

Section, without such complaint is an illegality which is not curable. In the instant case, there is no compliance of Section 195 of the Criminal Procedure Code, and hence the Magistrate had no jurisdiction to take cognizance of the offence under Section 186 of the Indian Penal Code on the report under Section 173 of the Criminal Procedure Code.

24. As regards offence under Section 353 of IPC, the gravamen of the offence is assault or use of criminal force against the public servant, with an intention to prevent or deter him from discharging his duty as such public servant. The term 'Assault' as defined under section 351 means making any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person. The explanation to this section spells out that mere words, without gesture or preparation does not amount to an assault.

25. Section 350 of the Indian Penal Code defines 'criminal force', to mean intentional use of force to any person, which as defined in section 349 contemplates causing motion, change of motion or cessation of motion by the three methods specified in the section. Furthermore, Section 350 envisages use of force without that person's consent, in order

to the committing of an offence; or with the intention to cause or knowing it to be likely that he will cause injury, fear or annoyance to the person to whom the force is used.

26. The records reveal that the police had visited the house of the Applicant no.2 on 09.09.2020 at around 01.00 a.m. The only allegation against the Applicant no.2 is that he told the police personnel "*beware if you touch the door*". The FIR as well as the other material on record does not indicate that the Applicant no.2 had made any gesture, which was likely to cause apprehension in the mind of the police personnel that the Applicant was about to use criminal force. In the absence of such gesture or preparation, the mere words would not constitute assault within the meaning of Section 351 of the IPC. Similarly, there is absolutely no material on record to indicate that this Applicant had used force to the police personnel within the meaning of Section 349 in order to commit an offence or to cause or knowing it likely to cause injury, fear or annoyance to the said police personnel. The records thus do not disclose the essential ingredients of Section 353 of the Indian Penal Code viz. assault or use of criminal force against the public servant.

27. The Applicants are also alleged to have committed offence under sections 201, 216, 504 and 506 of the Indian Penal Code. The

essential ingredients of Section 201 of IPC are that the person charged with the offence must have the knowledge or reason to believe that the offence has been committed and he should have caused disappearance of evidence with an intention of screening the offender from legal punishment. Section 216 prescribes punishment for harbouring the offender, who has escaped from custody or whose apprehension has been ordered, with an intention of preventing him from being apprehended.

28. The only allegation against the Applicants is that they had gone away with the Accused no.1 by the car which was parked at the place of the incident. The said car was not used for commission of any offence and removal of the said car from the spot of the incident does not amount to destroying of evidence. Furthermore, the Applicants are related to each other. Hence the mere fact that these Applicants were living in the same house along with the Accused no.1 or that they were seen going away with him by the same car would by no stretch of imagination constitute an offence under Section 216 of the Indian Penal Code. There are absolutely no allegations against the Applicants for having abused or threatened the first informant or any other person. Hence the essential ingredients of offences under Section 201, 216, 504 and 506 are not made out.

CONCLUSION:

31. Having gone through the entire material, we are of the considered view that the first information report as well as the material which forms part of the chargesheet, even if taken at face value and accepted in entirety, does not disclose any cognizable offence as against these Applicants. In such circumstances, compelling these Applicants to face trial on such unfounded allegations would be nothing but an abuse of process of law. Hence this is a fit case to exercise discretion under Section 482 of Cr.P.C.

32. Under the circumstances and in view of discussion supra, the Application is allowed qua the Applicants. Chargesheet No. 2 of 2020 filed before J.M.F.C. Pathri, which upon committal is registered as Sessions Case No.248 of 2022, pending on the file of learned Addl. Sessions Judge, Parbhani, is hereby quashed and set aside.

[**R.M. JOSHI, J.**] [**ANUJA PRABHUDESSAI, J.**]