

# **Rajiyaresh Khan Habib Kha Pathan And ... vs State Of Mha. Thr. Pso Ps Balapur Akola ... on 22 March, 2024**

**Author: Vinay Joshi**

**Bench: Vinay Joshi**

2024:BHC-NAG:3747-DB

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.1561/2022

1. Rajiyaresh Khan Habib Kha Pathan,  
age 31 Yrs., Occ. Education,  
R/o Kalekhanpura, Balapur,  
Akola.
2. Mohd. Umer Farooque Sheikh,  
Mustafa, age 27 Yrs., Occ. Education,  
R/o Ballochpura, Balapur,  
Akola. .... Applicants  
- Versus -
  1. State of Maharashtra,  
through P.S.O. Police Station,  
Balapur, Akola.
  2. Police Inspector,  
Police Station Balapur,  
Distt. Akola. .... Respondents

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Mr. S.V. Sohoni, Counsel with Mr. S.S. Sohoni, Counsel for the Petitioner.

Mr. I.J. Damle, A.P.P. for Respondent Nos.1 and 2.

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CORAM: VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.  
DATED : 22.3.2024.

ORAL JUDGMENT (Per Vinay Joshi, J.)

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Heard.      Rule.      Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. By this application the applicants are seeking to quash F.I.R in Crime No.0311/2022 registered by non-applicant No.1 for the offence punishable under Sections 353, 143 and 145 of Indian Penal Code with Section 135 of Maharashtra Police Act.

3. On the basis of report lodged by Police Inspector crime has been registered. It is the prosecution case that on 9.6.2022 in the afternoon around 2.30 p.m. while the informant Police Inspector was at police station a person namely Hrishikesh was brought to the police station alleging that he has made some derogatory post. While police were enquiring with said person it was learnt that a huge mob belonging to one particular community has assembled out of the police station. Applicant Nos.1 and 2 along with some other named persons and near about 100 people came to police station. They were asking police 3 apl1561.2022 to show a person who has posted a derogatory material on social media. While the police were pacifying the mob those persons including applicants have verbal altercation with the police and as such obstructed the public servant while discharging his duty, therefore, the crime.

4. Learned Counsel appearing for applicants primly canvassed that the offence punishable under Section 353 of Indian Penal Code has not been made out from the police report. It is submitted that the allegation is restricted to the extent of verbal altercation meaning thereby essential ingredients to constitute the offence of Section 353 namely 'assault or use of criminal force' are totally missing. Besides that it is argued that the other provisions under Indian Penal Code would run with the principal offence and in absence of proving offence of Section 353 they would not stand alone. It is further submitted that the provisions of Section 135 of Maharashtra Police Act would not apply since there is no notification promulgated as per 4 apl1561.2022 requirement of the said offence. Moreover it is non-cognizable offence in terms of Second Schedule of Code of Criminal Procedure.

5. The applicants' learned Counsel relied on the decision of this Court in case of Amer Khan V/s. State of Maharashtra and others reported in 2023 SCC OnLine Bom 818 wherein the then accused have rushed on the person of informant. In the said context this Court has considered the provisions of Sections 349, 351, 353 and 506 of Indian Penal Code and held that in absence of specific assault or criminal force the offence under Section 353 would not stand. Undoubtedly assault and criminal force are pre-requisites to constitute the offence punishable under Section 353 of Indian Penal Code. The term "assault" has been defined under Section 351 of Indian Penal Code which reads as below:-

"351. Assault - Whoever makes 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, is said to commit an assault."

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6. It is apparent that mere words or verbal altercation would not amount to an assault. The requirement is that the words which a person uses may cause any person to apprehend that the person making gesture is about use criminal force. In that regard there is no material besides allegation of mere verbal altercation.

7. As regards to use of criminal force is concerned, the term 'criminal force' has been defined under Section 350 of Indian Penal Code which reads as below:-

"350. Whoever intentionally uses force to any person, without that person's consent, in order to committing any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other."

8. In order to make out an offence of criminal force, one has to go through the term "force" explained under Section 349 of Indian Penal Code. The essence is that there must be use of criminal force which would result to cause of motion, change of motion or cessation of motion. In that regard there are no allegations to the extent that the act of accused has effect of putting the other in motion, or cutting the motion. Thus the F.I.R. coupled with investigation papers even if accepted at its face value does not make out an offence of assault.

9. There is no dispute that the offence punishable under Section 135 of Maharashtra Police Act attracts maximum punishment which may extend to the imprisonment of one year. Since the Maharashtra Police Act does not make out any specific provision stating nature of offence as cognizable or non-cognizable one has to rely on the general provisions contained in the Code. The First Schedule of Code of Criminal Procedure classifies that the offence under other Acts attracting imprisonment for less than three years are to be considered as of non-cognizable nature. To substantiate the said contention the applicants have attracted our attention to the decision of this Court in case of Pankaj V/s. State of Maharashtra, through Police Station Officer reported in 2021 SCC OnLine Bom 5669 which clarifies the said position.

10. Considering the above aspects it is evident that the F.I.R. and the material collected during investigation falls short to constitute the offence as charged. In the circumstances, continuation of prosecution would lead to abuse of the process of Court.

11. In view of the above application is allowed.

We hereby quash and set aside the F.I.R in Crime No.0311/2022 registered by non-applicant No.1 for the offence punishable under Sections 353, 143 and 145 of Indian Penal Code with Section 135 of Maharashtra Police Act. (MRS.VRUSHALI V. JOSHI, J.) (VINAY JOSHI, J.) Tambaskar.

Signed by: MR. N.V. TAMBASKAR Designation: PA To Honourable Judge Date: 28/03/2024  
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