



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 299 OF 2024

Swararaj @ Raj Shrikant Thackeray
Aged 56 years, Occ- Business
Residing at Shivthirth, Dr. M.B. Raut Road,
Shivaji Park, Mumbai-400 028.Petitioner

VERSUS

The State Of Maharashtra
Through the Senior Inspector of Police
Paranda Police Station, Dist. Osmanabad.Respondent

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Mr. Rajendra Shirodkar, Senior Advocate i/by Mr. Sayaji Nangre
and Mr. Arun Shejawal, Advocate for petitioner
Mr. S.R. Wakle, APP for Respondent-State.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 18th APRIL, 2024

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.
2. This petition filed under Article 227 of Constitution of India read with section 482 of Code of Criminal Procedure, takes exception to the order dated 04.11.2023 passed by learned Additional Sessions Judge, Paranda, District- Osmanabad in Criminal Revision Application No. 35/2023, thereby confirming the order dated 12.05.2023 passed by learned Judicial

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Magistrate First Class, Paranda in Regular Criminal Case No. 11/2009.

3. Petitioner is a leader of political party namely *Maharashtra Navnirman Sena* and is accused No. 6 in R.C.C. No. 11/2009, which is registered pursuant to charge sheet filed in Crime No. 163/2008 registered with Paranda Police Station, for offences punishable under sections 143, 341, 336, 337, 427, 109 of Indian Penal Code and Section 3 and 4 of Prevention of Damage to the Public Property Act and section 135 of Bombay Police Act and section 7 of Criminal Law Amendment Act.

4. In the nutshell case of prosecution is that on 21.10.2008 at about 8.00 am, informant namely Ashok Nirgudkar was plying S.T. bus bearing No. MH-12-AR-9852 on the route from Karmala to Tuljapur. He was accompanied by conductor Aslam Bagwan. It is alleged that at about 8.45 am, there were about 50-55 passengers in the bus. When the bus reached at T junction of Sonari Karmala, accused persons i.e. Jalal Shaikh, Babu Kshirsagar, Murtaza Sayyed, Azhar Shaikh and Sudeep More suddenly came before the bus and shouted that they are party workers of *Maharashtra Navnirman Sena* and shouted slogans as "मनसे जिंदाबाद, श्रीमान राज ठाकरे यांची सुटका

झालीच पाहिजे". Thereafter, they pelted stones on S.T. bus, due to which front window of bus was damaged causing loss of Rs. 5,000/-. Thereafter, co-accused damaged three more S.T. buses on the said spot.

5. On completion of investigation, charge sheet is filed and case is numbered as R.C.C. No. 11/2009. Petitioner filed application for discharge under section 239 Cr.P.C. Learned Magistrate was pleased to dismiss the said application by order dated 12.05.2023. Petitioner unsuccessfully challenged the said order by filing Criminal Revision Application No. 35/2023. Both these orders are impugned in the present petition.

6. Heard learned Senior Advocate for petitioner and learned APP for State. Perused the record.

7. Learned Senior Advocate for petitioner would urge that admittedly petitioner was not present at the scene of offence on 21.10.2008. He was arrested by Kherwadi Police Station, Mumbai, in connection with C.R. No. 264 of 2008 at about 3.30 a.m. on 21.10.2008 from Ratnagiri Government Public Works Department Guest House, Ratnagiri. Thereafter, he was brought to Mumbai and was produced before learned Metropolitan Magistrate, 32nd Court, Mumbai on 31.10.2008 at

about 3.00 p.m., bail was granted to him and subsequently he was handed over into the custody of Dombivali Police Station, Thane in C.R. No. I-257 of 2008. He was shown to be arrested in this crime and was produced before learned Judicial Magistrate First Class, Kalyan on 22.10.2008 and he was released on bail. Therefore, it cannot be said that petitioner has abetted the crime. It is submitted that alleged provocative speech of petitioner is not placed on record by the prosecution and it is not annexed to the charge sheet, in absence of which it cannot be said that petitioner has given provocative speech. Merely because co-accused raised slogans that is not sufficient to implicate petitioner for abetment of crime. Reliance is placed on the orders passed in similar circumstances in favour of petitioner by the learned Divisional Bench of this Court in Criminal Application No. 4769/2015 and 4770/2015 and by learned Single Judge of this Court in Criminal Application No. 4404/2019. It is submitted that learned Trial Judge and learned Sessions Judge have failed to consider the grounds raised by petitioner in proper perspective and have erred in rejecting discharge application filed by petitioner.

8. Per contra, learned APP supports the impugned

orders. He submits that since co-accused have raised slogans by taking name of petitioner, ingredients of abetment are clearly made out in the present case.

9. Perusal of charge sheet shows that the speech by which co-accused were allegedly instigated to commit offence is not annexed with the charge sheet. None of the witnesses, whose statements are recorded during investigation, have stated that they have heard the speech, which instigated the co-accused to commit the offence in question.

10. In Criminal Application No. 4770/2015 and Criminal Application No. 4769/2015, Division Bench of this Court has passed following order:

Criminal Application No. 4770/2015

"1. The applicant is popularly known as Raj Thackeray who is a political leader of a party by name "Maharashtra Navnirman Sena". He is accused No.10 in RCC No.97 of 2009, which is registered pursuant to charge sheet filed in Crime No.257 of 2008 registered with Jalna Police Station. The complainant alleged that the followers of the applicant committed offence of rioting and wrong restrain, causing mischief to public property etc on 21.10.2008. Admittedly the applicant was not present when the incident took place. He is made accused in this case only because it is alleged that the applicant made a speech somewhere else and because of such speech his followers got excited and they committed

offence. It is alleged that by making such speech the applicant abetted this offence.

2. On going through the provisions of Section 107 of Indian Penal code, we realized that the allegations made against the applicant would not amount to abetment. No material is brought on record to show that certain speech was made, the speech was provocative and that the speech was heard by other accused of this case. Unless the nature of utterance in the speech are brought on record in the charge sheet, the Police could not have roped in the applicant as an accused. When the charge sheet was filed the learned Magistrate ought to have realized this and ought to have refused to take cognizance of the case as against the applicant.

3. The criminal application therefore succeeds. The criminal application is allowed. RCC No.97 of 2009 arising pursuant to Crime No.257 of 2008 registered with Jalna Police Station is quashed as against the applicant."

**Criminal Application No. 4769/2015 With Criminal Application
No. 4771/2015**

"1. Both these applications can be disposed of by following common order.

2. The applicant in both these applications is Political Leader who is popularly known as Raj Thackeray. Both these applications seek quashment of Criminal case initiated through two different crimes registered at Majalgaon Police Station, Dist. Beed. The allegations made in the F.I.R. in both the cases are more or less similar. It is alleged that the members of the applicants political party committed offence of

rioting and causing mischief to public property etc. It is alleged in the F.I.R. that number of followers of the applicant gathered at the relevant time on public road and pelted stones on the S.T. buses and damaged wind sheet etc of the buses. Offence was registered against number of persons who were allegedly present at the time of incident and who had taken active part in the offence of rioting etc. But though the applicant admittedly was not present at the site at the time of incident, his name is also included as one of the accused. There is no allegations that it is the case of criminal conspiracy or abetment etc. On the face of it, including the applicant's name in the applications was erroneous. At the time, when the charge sheet was filed before the Court, it was necessary for the learned Magistrate not to take cognizance of the case against applicant. But this did not happen and that is why the applicant is constrained to appear before this Court. We are inclined to help him for the reasons mentioned above. The applications are allowed. The Criminal cases bearing SSC No.425 of 2009 and SCC No.7 of 2009 arising out of CR No.246 of 2008 and CR. No.247 of 2008 respectively registered at Majalgaon Police Station, Dist. Beed, are quashed as against the applicant.

3. The criminal applications are accordingly allowed and disposed of."

11. Aforesaid decisions are rendered in favour of petitioner in similar facts. Present case is squarely covered by said decisions.

12. Same view is adopted by learned Single Judge of this Court in Criminal Application No. 4404/2019.

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13. In absence of any material on record to show instigation on the part of petitioner in the present crime, charge against petitioner is groundless and Trial Court as well as Sessions Court have failed to appreciate this vital aspect and have erred in rejecting prayer of petitioner for discharge. The impugned orders are therefore unsustainable in law and facts of the case. Hence, the following order:

ORDER

- (i) Writ petition is allowed.
- (ii) Impugned order dated 04.11.2023, passed by learned Additional Sessions Judge, Paranda, in Criminal Revision Application No. 35/2023, is hereby quashed and set aside.
- (iii) Impugned order dated 12.05.2023, passed by learned Judicial Magistrate First Class, Paranda below Exhibit-75 in Regular Criminal Case No. 11/2009 is hereby quashed and set aside.
- (iv) Proceedings of Regular Criminal Case No. 11/2009, pending on the file of learned Judicial Magistrate First Class, Paranda, Dist. Osmanabad is quashed and set aside, to the extent of petitioner.

Rule made absolute in above terms.

[NITIN B. SURYAWANSHI, J.]