

MHMM140047722022



Filed on : 13/06/2022.  
Registered on : 13/06/2022.  
Decided on : 16/06/2022.  
Duration : 0 Y- 0 M-3 D.

Exh. : 9.

**IN THE COURT OF THE METROPOLITAN MAGISTRATE,  
40TH COURT, GIRGAON, MUMBAI.**

***(PRESIDED OVER BY SHRI.N.A.PATEL)***

- (a) The serial number of the case : 931/PS/2022
- (b) The date of the commission of the offence : 13/06/2022
- (c) The name of the informant : The State (Gaondevi Police Station in SPL. LAC No.08/2022)
- (d) The name of the accused person/s, age and residence : ***Sumitkumar Basantram Kashyap ,***
- (e) The offence complained of : Under Section 122 (b) of the Maharashtra Police Act.
- (f) The plea of the accused and his examination : The accused pleaded not guilty.
- (g) The final order : The accused is acquitted.

(h) The date of such order : 16/06/2022.

**Ld. APP for the State : Shri. B. U. Gavali.**

**Ld. Adv. for the accused : Shri. Kamlesh More.**

**J U D G M E N T**  
**(Delivered on 16<sup>th</sup> June 2022)**

The accused is facing trial for the offences punishable under Section 122 (b) of the Maharashtra Police Act.

**The case of the prosecution in nutshell is as under ;**

2. The incident took place on 13/06/2022 at about 01:30 am at Cadberry Junction, in front of Warden Road Mart, Gaondevi, Mumbai. The accused was found sitting under suspicious circumstances between sunrise and sunset at above place hiding himself and his face and not given proper explanation and he was intended to commit the offence of theft. Therefore, police has taken him to the police station. Hence, first information report was lodged to the Gaondevi Police Station.

3. On the basis of the report an offences punishable under Section 122 (b) of the Maharashtra Police Act was registered vide SPL LAC No.08/2022. Thereafter, Investigating Officer has recorded the statements of the witnesses and submitted the charge-sheet against the accused.

4. The accused was appeared. I have recorded particulars of offence vide Exh.3 and plea vide Exh.4. Thereafter, prosecution has examined two witnesses. I have recorded the statement of the accused under Section 313 of the Cr.Pc vide Exh.8.

5. Following points are arises for my determination and I have recorded my findings for the reasons thereon is as below ;

<u>Sr. Nos</u>	<u>Points</u>	<u>Findings</u>
1.	Whether prosecution proves that on 13/06/2022 at about 01:30 am at Cadberry Junction point, in front of Warden Road Mart, Gaondevi, Mumbai you accused found sitting under suspicious circumstances between sunset and sunrise at above place hiding himself and face and not given proper explanation about the same with intent to commit theft and thereby committed an offence punishable under Section 122 (b) of the Maharashtra Police Act ?	<u>In negative.</u>
2.	What order ?	<u>Accused is acquitted.</u>

### REASONS

#### AS TO POINT NO. 1 :-

6. To bring home guilt of the accused the prosecution has examined Rohan Chandrakant Koli as (PW1) vide Exh.5. He deposed that on 13/06/2022 he was attached to Gaondevi police station as Police Constable. On that day he was on night duty from 12/06/2022 at 08:00 pm to 13/06/2022 at about 08:00 am. They were patrolling along with API Darade, API Satardekar and police naik Kadam. When they reached to Cadberry junction at about 01:30 am one person was sitting in a dark opposite to Warden wine shop. He was hiding his face with handkerchief. Therefore, they went and inquired him. He told his name as Kashyap, age 29. He was resident of Shahajapur, Uttar Pradesh. Thereafter, API Darade called two panchas. They performed physical search but nothing was found. He asked about his presence but he was not answering satisfactorily.

Therefore, they think that he came there with intent to commit the theft. Therefore, he has lodged the FIR vide Exh.6.

7. In support of this contention prosecution has examined Shailesh Ramchandra Kadam as (PW2) vide Exh.7. He deposed that on 13/06/2020 he was attached to Gaondevi police station as Police naik. On that day he was on night duty from 12/06/2022 08:00 pm to 13/06/2022 at about 8:00 am. They were on patrolling along with API Darade, API Satardekar and police naik Koli as there was combing operation. When they reached to Cadberry junction at about 1:30 am one person was sitting in a dark opposite to Warden wine shop. He was hiding his face with handkerchief. He was wearing black shirt. Therefore, they went to him and inquired. He told his name as Sumita Kumar Vasantram Kashyap, age 29. He was resident of Shahajapur, UP. Thereafter, API Darade called two panchas. He told that he came from village but he has not shown the ticket. They performed physical search but nothing was found. They asked about his presence but he was not answering satisfactorily.

8. Heard both the Counsels for the respective parties. To prove guilt of the accused prosecution has examined two police witnesses i.e. the informant and witness. It is the case of the prosecution that on 13/06/2022 the accused was hiding his identity at Cadberry Junction at about 01:30 am. Therefore, they caught him and ask about his presence but he has not answering satisfactorily. Therefore, he was arrested and charge-sheeted.

9. To attract the offence punishable under Section 122 (b) of the Maharashtra Police Act, it is incumbent upon the prosecution to show that the accused was hiding his identity to commit certain offence. In the present matter, nowhere it is stated by the witnesses that what offence was accused

intending to commit.

10. The accused was arrested in Mumbai at around 01:30 am. In the city like Mumbai 01:30 am is not too late. Anyone can stand on near the road. Therefore, it cannot be termed as hiding identity with intent to commit an offence. Even if it assumed that 01:30 am is too late then also wondering on the street is not an offence when there is no night curfew. Admittedly there is no night curfew in Mumbai therefore, if accused was standing on the road, it is not an offence.

11. It is claimed by the prosecution that the accused has not given satisfactory answer. However, it is very vague statement. It is not deposed by any of the witness that what information was police asking from the accused. No details were given regarding the questions and answers. It shows that it is vague statement.

12. It is also claimed by the police that the accused has tide handkerchief on his mouth. Therefore, he was hiding his identity. It is the covid period and people use to wear the mask for safety purpose. Though mask is not compulsory, but there is advisory to wear the mask. If anyone is not having mask then they use handkerchief as a mask and if accused is using the handkerchief as a mask to covered his mouth it does not mean that he is hiding his identity.

13. Moreover, the accused has stated his name before the police it means that he was not hiding his identity, he has given his details to the police. Therefore, in my view on the basis of the evidence of the prosecution it is very difficult to hold that the accused was hiding his identity to commit an offence. Thus, prosecution failed to prove guilt of the accused beyond

reasonable doubt. Hence, the accused is entitled for acquittal. Therefore, I answer point no.1 in negative.

**AS TO POINT NO. 2 :-**

14. In answer to this point. I pass the following order -

**:- O R D E R :-**

1. Accused is hereby acquitted of the offence punishable under Section 122 (b) of the Maharashtra Police Act vide Section 255(1) of the Code of Criminal Procedure.
2. His bail bond stands cancelled.
3. Accused to furnish the bail as per Section 437-A of the Cr.P.C.

-sd/-

( *Nadeem A. Patel* )

Metropolitan Magistrate,  
40<sup>th</sup> Court, Girgaon, Mumbai.

Date: 16/06/2022.

Dictated on : 16/06/2022.

Transcribed on : 16/06/2022.

Signed on : 16/06/2022.

PPK.