

Presented on : 07.12.2016.
Registered on : 07.12.2016.
Decided on : 12.04.2022.
Duration : 05yrs.04m.06d.

**IN THE COURT OF METROPOLITAN MAGISTRATE,
52ND COURT, KURLA, MUMBAI.**

(Presided over by R. S. Pajankar)

(Judgment U/Sec. 355 of Cr. P. C.)

Exhibit-

1. The serial number of the case : C. C. No. 3520/PS/2016
(CNR No.: -MHMM13-001373-2017)
2. The date of commission of : 18.09.2015.
the offence
3. The name of the complainant : Police Naik Santosh Sahdev Raut
(if any) Through R.C.F. Police Station,
Mumbai.
4. The name of the accused : 1) Rajani Vijay Angre,
persons, their parentage and residence

2) Shahinnisha Farukhali Shaikh,

3) Sandhya Vasant Kamble,

4) Premlata @ Thakrani Ramjas
Singh,

5) Yasmin Usman Sayyad,

5. The offence complained of or : Under sections 143, 341 read with
proved: section 149 of the Indian Penal
Code read with section 37(3) of the
Maharashtra Police Act.
6. The plea of the accused and : The accused pleaded not guilty.
their examination (if any).
7. The final order: : The accused are acquitted.
8. The date of such order : 12.04.2022.

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Learned A.P.P for the state : Shri Thakur.

Learned Counsels for the accused : Shri Qureshi, Smt.Jadhav, Shri Patil
and Smt.Sawant.
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JUDGMENT

(Delivered on 12th day of April 2022)

Accused No.1 to 5 are prosecuted for the offence punishable under sections 143, 341 read with section 149 of the Indian Penal Code read with section 37(3) of the Maharashtra Police Act.

2) The prosecution case in short is that, on 18.09.2015, informant Police Naik Santosh Sahdev Raut had lodged First Information Report (Hereinafter referred as "F.I.R." for the sake of brevity) against accused Yasmin and other 25 to 30 women by alleging that on that day i.e. on 18.09.2015, at 11.00 hours they obstructed the traffic of Eastern Express Free Way by creating an unlawful assembly. On the basis of complaint of the informant, Police Sub Inspector Shri Dhaygude registered the offence punishable under sections 141, 142, 143, 341 read with section 149 of the Indian Penal Code. Thereafter, the Investigating Officer investigated the matter and arrested the accused and after completion of investigation he filed charge-sheet against the accused persons.

3) After filing of charge-sheet and appearance of accused Rajani, Shahinnisha, Sandhya and Premlata, particulars of offence were read over and explained to them by my Learned Predecessor Smt.Khedekar on 24.11.2017. Thereafter, on 04.07.2017, particulars of offence were read over and explained to accused Yasmin, by my Learned Predecessor Smt. Khedekar. The accused pleaded not guilty and claimed to be tried. Their defence is of total denial.

4) After considering the evidence produced by prosecution, following points arise for my determination and I have recorded my findings on those points with reasons as follows.

Sr. No.	Points	Findings
1.	Does prosecution prove that on 18.09.2015, at 11.00 hours at Eastern Free Way, Rahul Nagar, in front of MHADA Colony, Chembur, Mumbai, all accused alongwith absconding accused were members of an unlawful assembly, the common object of which was to commit offence and thereby committed an offence punishable under section 143 of the Indian Penal Code?in the negative.
2.	Does the prosecution prove that that on above date, time and place all accused alongwith absconding accused were members of an unlawful assembly in prosecution of their common object wrongfully restrained the traffic on the road and thereby committed an offence punishable under section 341 read with section 149 of the Indian Penal Code ?in the negative.
3.	Does the prosecution prove that, on above date, time and place all accused alongwith absconding accused assembled and contravened the Prohibitory Order of the Police Commissioner and thereby committed an offence punishable under section 37(3) punishable under section 135 of the Maharashtra Police Act?in the negative.
4.	What Order?	As per final order.

FINDINGS AND REASONS**As to point No. 1 to 4:-**

5) To bring home the guilt of the accused the prosecution has examined in all ten witnesses i.e.

- 1] Informant Police Constable Santosh Sahdev Raut (P.W.1),
- 2] Panch Witness Rajesh Baburao Purbhe (P.W.2),
- 3] Panch Witness Vasant Ashok Devrukhkar (P.W.3),
- 4] Witness Police Constable Bhushan Prakash Mahajan (P.W.4),
- 5] Witness Police Head Constable Yogesh Chandrakant Patankar (P.W.5),
- 6] Witness Woman Police Constable Mrs.Swati Sandip Nikam (P.W.6),
- 7] Witness Senior Police Inspector Vilas Hiranman Shinde (P.W.7),
- 8] Investigating Officer Assistant Police Inspector Shankar Sadashiv Dhaygude (P.W.8),
- 9] Investigating Officer Police Inspector Bharat Tukaram Shendge (P.W.9) and
- 10] Investigating Officer Retired Assistant Police Commissioner Pomaji Dharu Rathod (P.W.10).

6) Prosecution Witness Police Constable Santosh Sahdev Raut (P.W.1) is the informant. It has come in his evidence that, on 18.09.2015, at 11.00 a.m. when he was on duty at the police station, he received an information from Police Head Constable Patankar that some ladies were making agitation and restrained public on Eastern Free Way, Rahul Nagar, MHADA Colony, Chembur, Mumbai. Therefore, he went

there and saw that Yasmin Sayyad who is resident of that area and other ladies were doing "Rasta Roko". The A.C.P of Trombay Division, Sr.P.I. Raut, P.I. Shinde and other ladies police constables inquired with them as to why they were making agitation. They told that there was no water supply in their area. They were told that at that time there was prohibition order to assemble more than five persons and they should not assemble there. They said that without water supply they would not stop their agitation. Thereafter, they were removed from the road by applying little force. Then, he lodged F.I.R. (Exh.4). In his cross-examination it has come that, he did not make entry in station diary before going to the spot because he was in hurry. He further stated that he went to the spot in Sumo car, however, he does not remember vehicle number. He knew the accused because she was social worker. There was delay of five hours in lodging F.I.R. because they were giving understanding to the ladies gathered there for one hour and people from the building also came down. However, reason of delay has not been mentioned in F.I.R. All ladies present there were not arrested on the same day. He did not verify residential address of the accused.

7) From the evidence of the informant (PW.1) it appears that, on 18.09.2015, he received an information of agitation of women on Eastern Free Way, Rahul Nagar, MHADA Colony, Chembur, Mumbai and therefore, he went there and saw that women were making agitation because there was no water supply in their area. Thereafter, he lodged F.I.R.

8) Prosecution Witnesses Police Constable Bhushan Prakash Mahajan (P.W.4), Police Head Constable Yogesh Chandrakant Patankar (P.W.5), Woman Police Constable Mrs.Swati Sandip Nikam (P.W.6) and Senior Police Inspector Vilas Hiranman Shinde (P.W.7) have narrated the same story in their evidence. They have deposed that, at the time of incident they were present on the spot and that incident was occurred in their presence.

9) Prosecution Witness Assistant Police Inspector Shankar Sadashiv Dhaygude (P.W.8) is the Investigating Officer of this crime. He deposed that after registration of F.I.R. he visited the spot of incident and prepared the spot panchanama. However, Panch Witnesses Rajesh Baburao Purbhe (P.W.2) and Vasant Ashok Devrukhkar (P.W.3) did not support the case of the prosecution. They denied that the Investigating Officer has prepared the spot panchanama in their presence on the spot of incident. Therefore, the testimony of the Investigating Officer Shri Dhaygude (P.W.8) is not corroborated.

10) Prosecution Witness Retired Assistant Police Commissioner Pomaji Dharu Rathod (P.W.10) is the Senior Investigating Officer of this crime. He deposed that on 07.05.2016, he received the investigation of C.R.No.235 of 2015, due to transfer of Police Inspector Shinde. At that time one accused was arrested. He verified documents and thereafter, filed charge-sheet against arrested accused and other wanted accused.

11) Investigating Officer Police Inspector Bharat Tukaram Shendge (P.W.9) has deposed that, in this crime six ladies were

absconding. Thereafter, out of those six ladies, four ladies were arrested by Police Sub Inspector Jadhav. Thereafter, he filed supplementary charge-sheet against those accused namely Rajani Angre, Sandhya Kamble, Premlata Singh and Shahinnisha Shaikh.

12) After perusal of entire evidence produced by the prosecution it appears that, it is the story of the prosecution that on 18.09.2015, at 11.00 a.m. 25 to 30 women started agitation on Eastern Free Way and obstructed public road. They also breached the order of the Police Officer and also create an unlawful assembly. The informant (PW.1) and witnesses Police Constable Bhushan Prakash Mahajan (PW.4), Police Head Constable Yogesh Chandrakant Patankar (PW.5), Woman Police Constable Mrs.Swati Sandip Nikam (PW.6) and Senior Police Inspector Vilas Hiranman Shinde (PW.7) have narrated the same story in their evidence and deposed that, the incident was occurred in their presence. However these witnesses are police witnesses and they are interested witnesses.

13) Investigating Officer Assistant Police Inspector Shankar Sadashiv Dhaygude (PW.8) has deposed that, after registration of F.I.R. he visited the spot of incident and prepared the spot panchanama. However, Panch Witnesses Rajesh Baburao Purbhe (PW.2) and Vasant Ashok Devrukhkar (PW.3) did not support his testimony. Therefore, it creates serious doubt about preparation of the spot panchanama on the spot of incident in presence of panch witnesses.

14) The incident was occurred on Eastern Free Way.

Therefore, the independent witnesses were present on the spot of incident. However, the prosecution did not examine any independent witnesses. When the independent witnesses are available on the spot of incident, the rule of prudence requires the evidence of at least one independent witness. However, no single independent witness has been examined by the prosecution. Therefore, it creates doubt about genuineness on the investigation carried out by the Investigating Officer.

15) So also it has come in the evidence that, at the time of incident there were 35 to 40 women present on the spot of incident who were making agitation. However, the charge-sheet is filed only against five accused. It is strange that at the time of incident there were 35 to 40 women present on the spot of incident, however the police arrested only one accused on that day and did not arrest other women. The charge-sheet was filed only against accused No.1 and thereafter, four accused were arrested after four to five days of incident. The police did not arrest all women who were making agitation on the spot of incident and who were part of an unlawful assembly.

16) So also it has come in the evidence of witnesses Mrs. Swati Sandip Nikam (PW.6) and Senior Police Inspector Vilas Hiranman Shinde (PW.7) and Investigating Officer Assistant Police Inspector Shankar Sadashiv Dhaygude (PW.8) that on 18.09.2015, all ladies who were agitating on the spot of incident went to their home after giving an understanding by them and on that day no action was taken against those women. In democratic country making peaceful agitation is

fundamental right of citizen. The women were making agitation as there was no water supply in their area for some days. They were sent by the police to their home by giving an understanding. Therefore, there was no reason for the police to register F.I.R. against them and subsequently arrest them.

17) The record shows that, the police took action against some of ladies out of 30 to 40 ladies and filed charge-sheet against them. Therefore, on this count also action taken by the police is not found justified. So also there is delay of five hours in lodging F.I.R. and delay has not been explained in the F.I.R. Therefore, inordinate delay in lodging F.I.R. also creates doubt about the genuineness on the action taken by the police.

18) The evidence produced by the prosecution is not found cogent and reliable and it is insufficient to prove the guilt of the accused beyond all reasonable doubt. The prosecution failed to substantiate charge against the accused. Hence, the accused are entitled for acquittal. Therefore, I answer Points No.1 to 3 in the negative and in answer to point No.4, I proceed pass following order.

ORDER

- (1) Accused No.1 to 5 are acquitted from the offence punishable under sections 143, 341 read with section 149 of the Indian Penal Code read with section 37(3) of the Maharashtra Police Act vide section 255 (1) of the Criminal Procedure Code.

- (2) The bail bonds of the accused are canceled.
- (3) The accused are directed to furnish P.R. Bond and Surety Bond of Rs.5,000/- (Rupees Five Thousand Only) each for the compliance of section 437-A of the Criminal Procedure Code.
- (4) The prosecution has not taken any steps for securing presence of absconding accused. Therefore, proceeding is stopped against them under section 258 of the Criminal Procedure Code and they are discharged.
- (5) The seized property i.e. ladder be destroyed as per rules after appeal period is over.

The judgment is dictated and pronounced in open court.

Date: 12.04.2022.
Mumbai.

(R. S. Pajankar)
Metropolitan Magistrate,
52nd Court, Kurla, Mumbai.

