

MHMM140004552022



Filed on : 21/02/2022.
Registered on : 21/02/2022.
Decided on : 21/11/2022.
Duration : 0Y -9M -0D.

Exh. : 63.

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 : **119/PS/2022**
- (b) The date of the commission of the offence : 21/09/2021
- (c) The name of the informant : The State (Marine Drive Police Station in SPL LAC. No. 25/2021)
- (d) The name of the accused person/s, age and residence : **1. Chitra Kishor Wagh,**
Age- 45 years, Occ.- Social Worker,
Res:- 801, 8th floor, P. G. Building, Behind Gandhi Hospital, Dr. S. S. Rao Road, Parel, Mumbai-12.
- 2. Manisha Ashok Chaudhary,**
Age- 61 years, Occ.- MLA,
Res:- 602, Guru Vihar, D. N. Mhatre Road, Iksar, Borivali-West, Mumbai-92.

3. Bharti Hemant Lavekar,
 Age– 56 years, Occ.- MLA,
 Res:- 1504/7, A, Fortune 59
 society, New MHADA Tower,
 Lokhandwala Circle, Andheri,
 Mumbai.

- (e) The offence complained of : Under Section 37 (1)
 punishable under Section 135
 of the Maharashtra Police Act.
- (f) The plea of the accused and his examination : Accused pleaded not guilty.
- (g) The final order : Accused are acquitted.
- (h) The date of such order : 21/11/2022.

Ld. APP for the State : Shri. B. U. Gavali.
Ld. Adv. for the accused : Shri. Kuldip Pawar and Akhilesh
Chaubey.

J U D G M E N T
(Delivered on 21st November 2022)

Accused are facing trial for the offences under Section 37 (1)
 punishable under Section 135 of the Maharashtra Police Act.

The case of the prosecution in nutshell is as under ;

2. The incident took place on 29/09/2021 at about 3:00 to 03:15 pm at Mantralaya, Main gate, Madam Cama Road, Marine Drive, Mumbai. The informant was on his duty at Mantralaya that time at about 13:10 hours in front of main gate all accused along with other 4-5 lady party workers were raising the slogan against the government. The Governor has issued the letter requesting Chief Minister for arranging the special session

on the issue related to the crime against the woman. The pamphlets were with accused no.1 and all accused along with 4-5 lady workers were trying to enter into the gate of Mantralaya. All accused have breached the order of prohibiting the gathering, they protested and raised the slogan against the government. Thus, First information report is lodged to the Marine Drive police station. Thus, the report.

3. On the basis of the report an offences under Section 37 (1) punishable under Section 135 of the Maharashtra Police Act was registered vide CR. No. SPL LAC No. 25/2021. Thereafter, Investigating Officer has recorded the statements of the witnesses and submitted the charge-sheet against accused.

4. Accused were appeared. I have recorded particulars of offence and plea vide Exh.13. Thereafter, prosecution has examined three witnesses. I have recorded the statement of all accused under Section 313 of the Cr.Pc vide Exh.60 to Exh.62.

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

<u>Sr.</u> <u>Nos</u>	<u>Points</u>	<u>Findings</u>
1.	Whether prosecution proves that on 21/09/2021 at about 15:10 to 15:15 hours at Mantralaya, Main Gate, Madam Kama Road, Marine Drive, Mumbai all accused were assembled at above place in contravention of the notification withing the jurisdiction of Marine Drive police station issued by the Commissioner of Police, Greater Mumbai and thereby committed an offence under Section 37 (1) punishable under Section 135 of the Maharashtra Police Act ?	<u>In negative.</u>

2. What order ?

Accused are
acquitted.

REASONS

AS TO POINT NO. 1 :-

6. To bring home guilt of the accused the prosecution has examined Sanjay Devram Sangle as (PW1) vide Exh.42. He deposed that on 21/09/2021 he was attached to Marine Drive Police station as police hawaldar. On that day he was on day duty from 9:00 am. On that day at about 13:10 hours in front of main gate all three accused along with other 4-5 lady party workers were raising the slogan against the government. Accused had given the letter to the governor for arranging the special two days session on the issue related to the crime against the woman. On that day there was order of police Commissioner under section 144 of Cr.PC restricting to gathered of more than four or more people at one place. The letter was given to the chief minister but the special session was not called. The pamphlets were with accused no.1 and they were trying to enter into the gate of Mantralaya. All accused along with the 4-5 lady party workers were trying to enter into the gate. There were other people also they were watching. On that day Pravin Namdev Gaikwad was with him. The guards of Mantralaya were also there they have closed the door.

7. According to him, thereafter, API Pramod Gaikwad informed the police station and called Mhatre madam and Kale Madam of their police station. No one came except Mhatre and Kale madam. They asked them to stay there saying that PI Kadam was coming. They requested all the accused and party workers to stay there till arrival of PI Kadam but they left the place. He told it to PI Kadam that they requested them to wait

but all accused along with party workers went away. He further deposed that the FIR was lodged by him vide Exh.43. All the accused have breached an order under section 144 of the Cr.PC. The order was of prohibiting the gathering. He identified all accused in the Court. He has given specific time while lodging the FIR of incident.

8. In support of this contention prosecution has examined Pramod Namdeo Gaikwad as (PW2) vide Exh.57. He deposed that on 21/09/2021 he was at Mantrayla, security at 09:00 am. He along with police hawaldar Sangle was present. At around 03:00 to 03:15 pm accused no.1 along with accused no.2 and 3 and 3-4 ladies came together. In those days Governor of Maharashtra has requested Chief Minister to hold two days special session on the atrocity against woman. The said request was turn down by then Chief Minister by issuing the letter. All the accused burned the copies of said letter in front of office of minister and also raised the slogans. They requested them not to do this because there was an order of Police Commissioner of Mumbai prohibiting the gathering. Thereafter, staff of Marine Drive police station came there. Accused and other ladies leave the spot. He has not seen the said order prohibiting the gathering of Commissioner. He has not published the said order.

9. The Investigating Officer Morshereel Bilaluddin Patel (PW3) was examined by the prosecution vide Exh.58. She deposed that on 21/09/2021 she was attached to Marine Drive police station as PSI. On that day FIR bearing no. 25/2021 was lodged by her as per the statement of the informant. The said FIR was recorded as per the statement of the informant vide Exh.43. Thereafter, she has recorded the statement of witnesses. The accused have breached the prohibitory order of Commissioner prohibiting the gathering. She has attached xerox copy of

the order along with charge-sheet. The said copy was proved at Article-A. The certified copy of said order of that office was not received by her but they have received online copy. The said order was published by their mills special as per the law. The entries of station diary about the same was taken. During the course of investigation it was revealed that there was special request by the governor to Chief Minister for holding special assemble session for two days on the concern over atrocity against woman. The said request was turn down by then Chief Minister by letter. All accused have burned the copy of said letter and raised slogan against the government. There were around 6-7 protesters.

10. It is incumbent upon the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution has examined as much as three witnesses. Out of these three witnesses Morshereel Bilaluddin Patel (PW3) is the Investigating Officer and her evidence is technical one. She was not present on the spot at the time of incident. Therefore, her evidence is based on hearsay evidence, so far as the incident is concern. It is also technical one to the extent of filing charge-sheet. It means that story of the prosecution mainly depend on the testimony of the informant Sanjay Devram Sangle (PW1) and other eye-witness Pramod Namdeo Gaikwad (PW2). If evidence of both witnesses are perused, it appears that they are coming with the specific case that on 21/09/2021 they were at Mantralaya. They were on duty at main gate at about 3:10 pm all three accused along with 4-5 other ladies have raised the slogan against the government for not arranging the special session by the Chief Minister on the atrocity against the woman. The Chief Minister of Maharashtra has turned down request of the Governor for holding two days special session. They were protesting inspite of having prohibitory order of Commissioner of Police restraining gathering of more than four people at one place as per

Section 144 of the Cr.PC vide Section 33 of Maharashtra Police Act. The evidence of both witnesses are fully corroborate with FIR and consistent on material particulars.

11. It is the fact that the prosecution has examined all three witnesses and they are police witnesses except police witnesses no independent witness was examined by the prosecution. Though two eye-witnesses are police persons. But there is no rule that merely because witness are police persons their evidence is not reliable. If their evidence inspires the confidence, consistent and trustworthy it can be acted upon. The evidence of these two witnesses shows that three accused were with some unknown ladies and they were protesting. However, it is very vague statement. No name is mentioned in the FIR or in the charge-sheet of unknown ladies. There is no whisper regarding other unknown ladies. Even if evidence of Sanjay Devram Sangle (PW1) is perused he is specifically deposed that there were 4-5 ladies protesting with three accused. However, Pramod Namdeo Gaikwad (PW2) on the other hand deposed that along with 3-4 ladies accused were protesting. It means that both witnesses were not firm on the exact number of the unknown ladies. Their evidence is consistent and it appears to be vague on the point that how many unknown ladies were protesting along with accused.

12. Similarly, if the evidence of Sanjay Devram Sangle (PW1) is perused, it appears that he is coming with the case that accused along with 4-5 ladies who claimed to be party workers of BJP trying to enter into the Mantralaya and they were having pamphlets. On the other hand if the evidence of other witness Pramod Namdeo Gaikwad (PW2) is perused, he specifically deposed that accused burned the copies of said letter in front of office of Minister. One eye-witness deposed that they are trying to enter in

to the Mantrayla and other is deposed that they have burned the copies of the letter in front of office of Minsiter. Their evidence is inconsistent and there is variance in their statement which also create the doubt in the story of the prosecution regarding actual incident.

13. It is also deposed by both witnesses that accused along with other unknown ladies were raising the slogan. However, neither slogans were mentioned in the FIR nor deposed by the witnesses. Their evidence regarding the slogan is also very vague. Admittedly incident was occurred at main gate of Mantralaya. It is deposed by witness also that incident was seen by many people. But no independent witness was examined by the prosecution. Even statement of the independent witness was also not recorded by the Investigating Officer. Therefore, it create doubt in the story of the prosecution and accused are entitled for benefit of doubt.

14. Apart from the incident, one technical point is important. The prosecution is coming with the specific case that prohibitory order under Section 144 of the Cr.PC vide Section 37 of the Maharashtra Police Act was inforce of Police Commissioner prohibiting gathering of four or more than four people which was breached by accused. When prosecution is coming with the case that accused have breached the said order it is the duty of the prosecution to prove the said order.

15. As per Section 155 of the Maharashtra Police Act method is provided for proving the said order or notification. As per Section 155 of the Maharashtra Police Act the said order may be proved by the prosecution by producing the said order publishing in Official gazette (original) or office copy thereof signed by such Magistrate or by the officer certified to be true as original. However, in the present matter xerox copy

is filed on record. The said order is not proved. Therefore, it is very difficult to held that there was an order under Section 144 of the Cr.PC and it was inforce. Hence, on this ground of not proving the prohibitory order accused are liable to be acquitted. Hence, I answer point no. 1 in negative.

AS TO POINT NO. 2 :-

16. As discussed above, the prosecution failed to prove the guilt of accused beyond reasonable doubt. Therefore, accused are entitled for acquittal. Hence, I pass the following order -

:- O R D E R :-

1. Accused nos. 1 to 3 are hereby acquitted of the offence under Section 37 (1) punishable under Section 135 of the Maharashtra Police Act vide Section 255(1) of the Code of Criminal Procedure.
2. Their bail bonds stand canceled.
3. Accused are directed to furnish the bail as per Section 437-A of the Cr.P.C.

Date:- 21/11/2022.

(Nadeem A. Patel)
Metropolitan Magistrate,
40th Court, Girgaon, Mumbai.

Dictated on : 21/11/2022.
Transcribed on : 21/11/2022.
Signed on : 21/11/2022.
PPK.

