IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 559 OF 2024

Gobindram Daryanumal Talreja & Ors. .. Applicants

Versus

The State of Maharashtra .. Respondent

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- Ms. Meenal Chandnani, Advocate for Applicants
- Mr. Gobindram D. Talreja - Applicant No. 1, Haresh Sobhraj Motwani - Applicant No. 2 & Mr. Prateek Naishadh Sanghvi - Applicant No. 3 present
- Ms. Manisha Tidke, APP for Respondent - State
- Mr. Mangesh H. Sant, PSI, Vakola Police Station

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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 21, 2024

JUDGMENT:

1. This Criminal Revision Application challenges the rejection order dated 25.06.2024 passed by learned Additional Sessions Judge, Court Room No. 21, Mumbai in Discharge Application filed below Exh. 13 in Sessions Case No. 379 of 2019 filed by Applicants.

2. Applicants have been arraigned as accused Nos. 1 to 3 respectively in connection with FIR bearing CR No. 548 of 2007 registered with Vakola Police Station on 03.11.2004 for offences under Section 353 r/w 34 of IPC at the instance of Police Inspector, ACB, CBI Mr. Bhalchandra Moreshwar Chonkar. No charge has been framed in the last 17 years. Applicants filed Application for discharge dated

10.10.2022 below Exh. 13 which stands rejected by the impugned order. Applicant No. 1 - Gobindram Daryanomal Talreja is 76 years old, Applicant No. 2 - Haresh Sobhraj Motwani is 72 years old and Applicant No. 3 - Prateek Naishadh Sanghvi is 38 years old as on date. Applicant Nos. 1 and 2 are Advocates by profession and Applicant No. 3 was a law intern undergoing his internship with Applicant No. 1 at the time of incident. He is a practicing Advocate at the Bar today.

3. Briefly stated are the facts of the present case required for consideration are as follows:-

3.1. On 03.11.2007 Applicant No. 1 received a mobile phone call from Ms. Sonal Chitroda CMD of All Services under 1 Roof Pvt Ltd, his client Company at about 8:00 a.m. in the morning informing him that CBI Officers have visited their office premises situated at Unit No. 7, Shantinagar Co-op. Industrial Estate, Plot No. 4-B, Vakola, Santacruz (E), Mumbai - 400 055 at 07:15 a.m. and were conducting search at the said office premises. Hence, she requested him to visit her office. Because of his Court Schedule, Applicant No. 1 expressed his inability to visit the office on that day in the morning as he was required to attend the Labour Court for conducting some other case there. Applicant No. 1 however informed her that since CBI Officers had shown her the search warrant issued by Court, she and her staff would have to co-operate with them in the search. He informed her

that he would visit the office immediately after his Court commitments for the day were over.

3.2. At about 4:45 p.m. he received another mobile phone call from Ms. Sonal Chitroda informing him that the search at her office was still being carried on since 7:15 a.m. in the morning and one of the CBI Officer behaved very rudely and even assaulted one of her staff member and the CBI Officers were pressuring her staff to sign certain papers against their wishes. Hence expressing her anxiety, fear and apprehending harm at the hands of the CBI Officers, she requested Applicant No. 1 to immediately rush to her office to rescue the situation.

3.3. Applicant No. 1 being busy at that time in Court informed one of his Associate Advocate i.e. Applicant No. 2 who was before the learned Addl. Metropolitan Magistrate's 9th Court at Bandra at that time to accompany him to visit the office premises of his client at Vakola where the CBI raid was underway. Applicant No. 1 also took along Applicant No. 3 who was then a law student and engaged as intern by Applicant No. 1's Law Firm.

3.4. At about 5:00 p.m., Applicants reached the office premises at Vakola and met Ms. Sonal Chitroda in her cabin and as she was informing them about the search operation in her office, one of

the CBI Officer Mr. Indrajeet Bisht, Police Inspector came there and questioned Applicant Nos. 1 to 3 as to how did they enter the office premises without permission when search was undertaken by the CBI. Applicant No. 1 informed him that he was an Advocate by profession and at the request made by his client Ms. Sonal Chitroda, he had come there to render assistance to her since the search which began at 7:15 a.m. in the morning was continuing for a long time. At this juncture Mr. Indrajeet Bisht called Mr. Bhalchandra Moreshwar Chonkar, PI, ACB, CBI who demanded to see the identity cards of the Applicants. Identity cards of the Applicants were shown and in return Applicant No. 1 asked the CBI Officers to show their identity cards. At this juncture, the mobile phone of Applicant No. 1 started ringing and when Applicant No. 1 was about to answer the call, Mr. Chonkar directed the Applicant No. 1 to handover his mobile phone to him which was refused by Applicant No. 1. Since Applicant No. 1 had asked Mr. Chonkar and other CBI Officers / Staff present to show their identity cards, all CBI Officers gathered in the cabin of Ms. Sonal Chitroda CMD and Mr. Chonkar directed one of them Mr. Ganpat Kadam, Police Hawaldar, to go to Vakola Police Station and bring police assistance for taking further action. Police Officers from Vakola Police Station arrived at the office premises and asked all three

Applicants to accompany them to Vakola Police Station, which was done immediately by Applicants.

3.5. FIR bearing No. 548 of 2007 was registered against Applicants on the complaint of Mr. Chonkar, under Section 353 r/w Section 34 of IPC on 03.11.2007 by Vakola Police Station. It is alleged in the FIR that when the CBI team was undertaking search in the office premises of the Company at Vakola from 7:15 a.m. in the morning for collecting evidence in regard to C.R. No. 32 of 2007 for the offences under Sections 120(b) 420 r/w Section 13(2), 13(1)(d) of Anti-Corruption Act, three unknown persons (referring to Applicants) came their without obtaining their permission and introduced themselves as (1) Mr. Gobindram Daryanomal Talreja, Advocate; (2) Mr. Haresh Sobhraj Motwani, Advocate; and (3) Mr. Pratik Naushad Sanghavi, their Assistant. It is alleged in the FIR that the complainant informed them that lawful search was going on and they should go away from there but they refused to go and restrained the CBI Officers from carrying on search. It is stated that therefore the complainant sent Mr. G.B. Kadam, Police Hawaldar to Vakola Police Station for getting police assistance, who returned at about 18:00 hours alongwith (1) Mr. Goswami Police Inspector; (2) Mr. Arvind Pawar, API and three police constables of Vakola Police Station. Police Officers deliberated with the Applicants who informed them that they were legal advisors

of Ms. Sonal Chitroda, owner of the Company and therefore they were present there on her request. Thereupon Applicants were asked to accompany the Police Officers to the Police Station where they were arrested with the common intention to obstruct government work of conducting search operation and the police recorded statement of four witnesses who were four CBI Officers apart from the complainant. FIR No. 548 of 2007 for offences under Section 353 r/w Section 34 of IPC was registered against Applicants.

3.6. Applicants were arrested on 03.11.2007 and produced before the Court of Metropolitan Magistrate's Court at Bandra on 04.112007 and released on bail on the following day. Charge sheet is filed on 04.09.2008 by Vakola Police Station before the learned Metropolitan Magistrate's 32nd Court, Bandra, Mumbai for alleged offences against Applicants under Sections 353 r/w Section 34 of IPC in Criminal Case No. 1446/PS/2008.

3.7. Raid was carried out by Mr. Bhalchandra M. Chonkar along with Police Inspector Mr. Indrajeet Bisht, Police hawaldar Mr. Ganpat Kadam and police constables Mr. Mahesh Garjalrwar and Mr. Vilas More. Admittedly they carried a search warrant from the Special Court, Mumbai to carry out the search. Trial has not commenced till date after 17 long years. All that the prosecution has done is to have recorded the statements of Mr. Bhalchandra Chonkar, Mr. Ganpat

Kadam, Mr. Mahesh Garjalwar, Mr. Indrajitsing Bisht and Mr. Vilas More, all five (5) CBI Officers / Staff.

4. Though Applicants are represented by Advocate on Record, Applicant No. 1 has appeared as Counsel for self and the other two Applicants. He would submit that all three (3) Applicants are Advocates and legal professionals and hail from very respectable families without having any antecedents of criminal record and are law abiding citizens. He would submit that Applicant Nos. 1 and 2 were practicing Advocates whereas Applicant No. 3 was a law intern with Applicant No. 1's firm on the date of the incident. He would submit that Discharge Application filed by Applicants ought to have been considered in view of the fact that the Applicants have been maliciously charged with the offence registered with Section 353 r/w Section 34 of IPC and the alleged investigation and recording of statements is clearly one sided and the police have made no efforts whatsoever to unearth the real truth. He would submit that if the statements of the five prosecution witnesses are seen, they are absolutely identical to each other save and except the name of deponent on the said statements.

5. What is stated in the complaint is delineated in the facts herein above but in addition thereto, the complainant Mr. Bhalchandra Chonkar, Police Inspector Anti-Corruption Branch, CBI has alleged that

the Applicants who introduced themselves as legal advisors of Ms. Sonal Chitroda did not allow the search to be carried out and hence they were taken into custody. By what means and how is not stated by any of the witnesses. This according to him is a completely false allegation. The relevant portion of the prosecution's five witnesses whose names are delineated herein above and which are found to be identical in all five statements is reproduced below:-

> *" for collecting the evidence in the offence and for conducting search of the office premises of the above-named Company, after obtaining search warrant from Hon'ble Special Court, Mumbai on 03.11.2007 at about 7.15 am in the morning, Complainant, Police Inspector Shri Bisht, Police Havaldar Shri G. B. Kadam, Police Constable Garjalwar, Vilas More, came to the office of above-named company. They gave information about the said offence to Smt. Sonal Chitroda CMD of the company and showed her search warrant and obtained her signature and started search of the office premises. When the search was in progress, at about 17.20 hrs., Three unknown persons entered the place of search without obtaining permission of the Complainant or Police Officers. When Complainant asked them as to why they entered without obtaining permission, one of them gave his name as Gobindram Daryanomal Talreja, and stated that he was Advocate and second person gave his name as Haresh Shobhraj Motwani and stated that he was Advocate and third person gave his name as Prateek Naushad Sanghvi and stated that he was their Assistant At that time, the Complainant told them that lawful search was going on and they should go away and asked them to go away without creating any sort of obstruction. At that time, they all three asked for identity card of the Complainant, which Complainant showed them and asked them to go away from there. They refused to go away from there and waited there and obstructed from carrying out search.*
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> *Then Complainant asked Shri G. B. Kadam, Police Havaldar accompanying him, to go to Vakola Police Station for Police Assistance. He went to Police Station and came back at about 18.00 hrs. to aforesaid office along with Police Inspector Goswami, Sub-Inspector Shri Pawar and Police Amaldar. When Police enquired from Three persons, they told them that they are Legal Advisors of Smt. Sonal Chitroda, the owner of the said Company and told that they would not allow search to be carried on. Police took these persons in their custody and the Complainant came to Vakola Police*

Station and criminal case under Section 353 and 34 of Indian Penal Code was registered against them."

5.1. He would submit that the instant case has been maliciously and falsely foisted by CBI on Applicants to set the criminal process in motion against them. He would submit that Applicants i.e. Applicant Nos. 1 an 2 being the legal advisors of Ms. Sonal Chitroda, owner of the Company visited her premises on her request after receiving her twin mobile phone calls. He would submit that Applicants filed Application dated 01.12.2009 before the Metropolitan Magistrate 32nd Court, Bandra, Mumbai under Section 258 of Cr.P.C. praying for stoppage of the proceedings on various grounds which was rejected by order dated 01.12.2009. Thereafter Applicants filed three separate Applications dated 26.10.2015 and 06.08.2016 before the learned Magistrate, 71st Court Bandra, Mumbai for seeking discharge and acquittal giving their objections for recording of plea under Section 251 of Cr.P.C. which was not decided by learned Court even after hearing both the parties. He would submit that at the incident spot, there were many eye witnesses who could have been interrogated by the prosecution / investigating agency with the help of police and their statement could have been recorded which was not done. He would submit that the five statements recorded by the Investigating Officer is of the five CBI Officers / Staff. He would

further submit that assuming for the sake of argument that the statements of all prosecution witnesses recorded are taken at their face value even then it would not prove or conclude that any alleged offence under Section 353 of IPC was committed by Applicants. On 12.03.2019, Metropolitan Magistrate's 71st Court Bandra, Mumbai committed the matter to the Sessions Court, Mumbai in view of amendment to Sections 352 and 353 of IPC by the Maharashtra Amendment Act of 40/2018 dated 07.06.2018. Applicants filed Application dated 20.08.2019 below Exh. 5 for remanding back the matter to the Court of Metropolitan Magistrate's 71st Court Bandra, Mumbai or to another Magistrate's Court having jurisdiction. Learned Additional Sessions Judge directed Respondent State to file its say. Thereafter the pandemic struck and Applicants decided not to pursue the said Application. Discharge Application was filed below Exh. 13 on 10.10.2022 by Applicants pleading that the search at the office belonging to Ms. Sonal Chitroda commenced at 7:15 a.m. in the morning and it is an admitted position that the Applicants visited the said office at about 17:20 Hours (5:20 p.m.) which is after almost 10 hours. He would submit that the Applicants did not obstruct the CBI officials on duty from carrying out their search or continuing the search but the fact that Applicant No. 1 asked CBI officials to show their identity cards irked Mr. Bhalchandra Moreshwar Chonkar and

what is most material in the present case is that the offence under Section 353 IPC is foisted on Applicants. He would submit that despite a specific direction by the learned Additional Sessions Judge directing Respondent-State to file its reply to the Discharge Application, prosecution on some ground or another failed to file their say to the Discharge Application and learned Court was considered to observe in roznama on 22.01.2024 that no say was filed by Respondents and case for discharge was decided by the impugned order rejecting the Application below Exh. 13. Just 10 days before the determination of Discharge Application, matter was transferred from the Court of Additional Sessions Judge 17th Court, Mumbai to the Court of learned Additional Sessions Judge, Court Room No. 21, Mumbai. At this stage, Respondent State filed Application below Exh. 27 seeking leave of the Court to file its say to the Application for Discharge below Exh. 13 which was heard by the Court. He would submit that according to Applicants, the charge-sheet filed by prosecution does not have any ingredients of offence committed under Section 353 r/w Section 34 IPC which have been disclosed therein. However, immediately on the following day i.e. on 25.06.2024, Discharge Application was dismissed. On 26.06.2024 as per the order uploaded on the e-Court website, Applicants learnt that the Court had rejected their Application for Discharge on the previous date. Said

order was uploaded on the e-Court website on 04.07.2024. On 28.06.2024, Applicants through their Advocate applied for certified copy of the order passed on 25.06.2024. He would submit that the principal reason for challenge to rejection of Discharge Application by the impugned order is that from the entire material placed on record by the prosecution, it is not established or made out that commission of any offence under Section 353 IPC took place and therefore the Discharge Application ought to have been allowed. He would submit that once no sufficient case whatsoever is disclosed in charge sheet / final report against the Applicants to proceed under Section 353, the Discharge Application ought to have been allowed. He have taken me through the provisions of Section 353 IPC and would contend that none of the ingredients therein have been proved by the prosecution even on *prima facie* basis. He would submit that Section 353 pertains to assault on a government servant to obstruct him from carrying out his official duty by use of criminal force or gestures. In the present facts and circumstances, there is no assault whatsoever which has been complained against the Applicants by CBI Officers in their own statement. He would submit that Applicants being Advocates and legal advisors of Ms. Ms. Sonal Chitroda visited her officer on her repeated requests and had never at any point of time obstructed the ongoing search operation which had commenced at 7:15 a.m. (10

hours ago) in the morning on that date. He would submit that if any assault by use of means of force was carried out, the Police ought to have investigated the nature of assault, but most importantly all five prosecution witnesses then would have described the alleged assault by Applicants in obstructing their further search operation at 5:20 p.m. in the evening. However their statements are bereft of any fact of assault or obstruction. He would submit that in view of the aforesaid allegation of assault, ingredients of assault have not been established and looking into the statements of the five witnesses, learned Trial Court ought to have allowed the Discharge Application. He would submit that none of the five prosecution witnesses have stated in their statements that the search had to be stopped or halted because of intervention or presence of Applicants. He would submit that application of the provisions of Section 353 IPC has very drastic consequences in as much as Applicants who are Advocates practising in the legal profession have carried the stigma of being arraigned as accused in the criminal aforesaid case since November 2007 until today. He would submit that indeed there is no *prima facie* evidence of Applicants having assaulted and obstructed the five CBI Officers from carrying out their duty. He would submit that Sessions Court failed to consider and appreciate the explanation to Section 353 IPC defining "assault" under IPC that mere words do not amount to assault but the

words the person uses may give his gestures or preparation such a meaning as may make those gestures or preparation amounting to an assault. He would submit that the present case is a clearly illegal case foisted by the prosecution on Applicants which has not proven any of the ingredients of assault or use of criminal force as consequence thereof. He would submit that Applicants were discharging their professional duties as Advocates. He would submit that essential ingredients of Section 353 IPC are therefore not made out. Hence, the FIR registered for the offence under Section 353 read with 34 IPC is required to be struck down and Discharge Application ought to have been allowed. He would submit that the impugned order suffers from serious legal infirmity in not considering the essential parameters of Section 353 IPC, hence the Discharge Application filed below Exh. 13 ought to have been allowed.

6. ***PER CONTRA,*** Ms. Tidke, learned APP would support the impugned order passed below Exh. 13 dated 25.06.2024 and would submit that questioning by Applicants to CBI Officers at the incident spot and asking them to produce their identity cards for inspection in fact amounted to creating obstruction in the carriage of duty by the CBI Officers. However in her usual fairness, she would after reading the five statements of the prosecution witnesses submit that it is true that all five statements are absolutely identical and in none of the

statements a positive case is allegedly stated about assault by Applicants. She has drawn my attention to the statements of the five prosecution witnesses recorded which as appended at page Nos. 132 to 135 of the proceedings and would submit that on reading of the said statements, it is seen that when the CBI Officers were asked to show their identity cards and after they had shown their identity cards to Applicants the Applicants were directed to leave the premises which the Applicants refused and by such refusal to leave the premises, Applicants caused obstruction in the search operations carried out by the CBI Officers. She would submit that Applicants had also informed the CBI Officers that they were Advocates and legal advisors of Ms. Sonal Chitroda and visited her office premises at her request due to the ongoing CBI search since 7:15 a.m. in the morning and that they will not allow the CBI Officers to carry out further search. This fact recorded in the five statements of the CBI Officers contradicts the prosecution's case because it is the prosecution case that after both sides namely Applicants and CBI Officers called upon each other to show their identity cards and which were in fact shown by both sides to each other, Applicants refused to move out of the premises creating obstruction. She would submit that present Revision Application be therefore dismissed and the impugned order rejecting the Discharge Application be upheld. On being questioned as to why the trial has

not commenced after 17 years, learned APP has no answer to the same.

7. Heard both the learned Advocates and with their able assistance, perused the entire record of the case.

8. At the outset, it is seen that application of provisions of Section 353 IPC would involve causing obstruction to any public servant who may be assaulted by use of criminal force against him, *inter alia,* with intent that he would thereby be prevented or deterred from discharging his official duty. Thus, this very act of assault or use of criminal force itself is required to be gathered from the facts of the case. In the five statements recorded by the prosecution witnesses, none of the ingredients attributable to Section 353 IPC can be gathered from therein. All that is stated and repeated by each of the five prosecution witnesses is that Applicants visited the subject premises and thereafter both sides asked each other to show their identity cards which were shown by them and after that according to prosecution, Applicants were told to leave but Applicants did not leave, hence causing obstruction. However, it is seen that Police Inspector of Anti-Corruption Branch, CBI, Mumbai, Mr. Bhalchandra Chonkar on being asked to show his identity card to the Applicants immediately thereafter called Police Constable Mr. Ganpat Kadam go to Vakola Police Station and bring police assistance for taking further

action. Impugned order is passed on the basis of the Court being satisfied that there was *prima facie* evidence based on the facts and circumstances which have been delineated herein above for invoking the provisions of Section 353 IPC for assault. All that is stated in the statements of the five prosecution witnesses is that Applicants were told to leave but they did not leave the premises and they obstructed the search operation. Whether this submission would be good enough to qualify the presence of the ingredients of Section 353 IPC is the question to be decided in the present case. Section 353 IPC reads thus:-

> *"353. Assault or criminal force to deter public servant from discharge of his duty - Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*

8.1. It is seen that Section 353 IPC refers to assault or criminal force to deter public servant from discharge of his duty. "Assault" is defined separately under Section 351 IPC and it states that 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 on that person, is said to commit assault. It is

extremely significant to note that explanation to Section 353 IPC is of absolute relevance in the present case which states that mere words do not amount to an assault but the words which a person uses may give his gestures or preparation such a meaning as may make those gestures or preparation amounting to an assault. What this explanation means in the present case is that if the five statements of CBI Officers are perused, it would clearly show that it was a mere exchange of words which had taken place between Applicants on one side and the CBI officer Mr. Bhalchandra Chonkar on the other side. Save and except the words exchanged between the two sides, there is nothing on record to show that any of the Applicants caused obstruction in the ongoing search operation or line of duty of CBI Officers. It is seen that when the Police party from Vakola Police Station arrived at the behest of Mr. Chonkar and asked the Applicants to accompany them, the Applicants immediately abided by the said orders. This clearly depicted the conduct of the Applicants. Applicant Nos. 1, 2 and 3 before me are respected lawyers practicing at this Bar. They are professionals. Legal profession involves a branch of learning. As per Black's Law Dictionary, 11th Edition, "Profession" means "a vocation requiring advanced education and training; especially concerning one of the three traditional Professions-Law, Medicine and the Ministry". "Professional" means "someone who belongs to a

learned profession or whose occupation requires a high level of training and proficiency. "Profession" would require advanced education and training in some branch of learning or science. The nature of work is also skilled and specialized one, substantial part of which would be mental rather than manual. A professional cannot be treated equally or at par with a businessman or a trader or a service provider of products or goods. In so far as the legal profession is concerned, Supreme Court in the case of ***Bar of Indian Lawyers Vs. National Institute of Communicable Diseases***[1] while considering the maintainability of Consumer Protection Act to be made applicable to the legal profession having regard to the entire spectrum and scheme of the said Act has compared other profession with the legal profession as under. In paragraph Nos. 34 and 35 of the said decision, Supreme Court answers the question that the legal profession cannot be equated with any other traditional professions. That it is not commercial in nature but it is essentially a service oriented profession. It holds that the Advocates are expected to be fearless and independent for protecting the rights of citizens for upholding the Rule of law and also for protecting the independence of judiciary. For reference, paragraph Nos. 34 and 35 of the aforesaid decision are reproduced below:-

1 (2024) 8 SCC 430

> *"34. It is thus well recognized in catena of decisions that the legal profession cannot be equated with any other traditional professions. It is not commercial in nature but is essentially a service oriented, noble profession. It cannot be gainsaid that the role of Advocates is indispensable in the Justice Delivery System. An evolution of jurisprudence to keep our Constitution vibrant is possible only with the positive contribution of the Advocates. The Advocates are expected to be fearless and independent for protecting the rights of citizens, for upholding the Rule of law and also for protecting the Independence of Judiciary. People repose immense faith in the Judiciary, and the Bar being an integral part of the Judicial System has been assigned a very crucial role for preserving the independence of the Judiciary, and in turn the very democratic set up of the Nation. The Advocates are perceived to be the intellectuals amongst the elites and social activists amongst the downtrodden. That is the reason they are expected to act according to the principles of uberrima fides i.e., the utmost good faith, integrity, fairness and loyalty while handling the legal proceedings of his client. Being a responsible officer of the court and an important adjunct of the administration of justice, an Advocate owes his duty not only to his client but also to the court as well as to the opposite side.*
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> *35. The legal profession is different from the other professions also for the reason that what the Advocates do, affects not only an individual but the entire administration of justice, which is the foundation of the civilized society. It must be remembered that the legal profession is a solemn and serious profession. It has always been held in very high esteem because of the stellar role played by the stalwarts in the profession to strengthen the judicial system in the country. Their services in making the judicial system efficient, effective and credible, and in creating a strong and impartial Judiciary, which is one of the three pillars of the Democracy, could not be compared with the services rendered by other professionals. Therefore, having regard to the role, status and duties of the Advocates as the professionals, we are of the opinion that the legal profession is sui generis i.e. unique in nature and cannot be compared with any other profession."*

8.2. rom what is quoted herein above if made applicable to the present case, then it is quite right on the part of the client to have called her legal advisor / Advocate to visit her office where the search operation had commenced at 7:15 a.m. in the morning and was

carried out during the day for more than 10 hours. A client subjugated to search by Law Enforcement Agencies is bound to call his/her legal Advisor / Advocate to ask them to help him / her. Presence of Applicants at the office of their client was in fact completely in their professional capacity and it cannot be alleged that their mere presence at the office and their questioning about the identity of the CBI Officers would amount to cause any obstruction whatsoever to the CBI to continue with the search operation. Neither that is the allegation on the part of CBI Officers whose statements have been recorded that because of the mere presence of Applicants, search operation even after 10 hours had stopped due to their intervention or they were prevented from carrying out any further search. On the contrary when the words were exchanged between the two sides i.e. Applicants on one side and CBI Officers on the other side, at the direction of Mr. Chonkar, a constable was sent to the nearby Vakola Police Station to get police assistance. Even after the police arrived all that happened is that on the directions of Mr. Chonkar the police asked Applicants to accompany them to the Police Station which the Applicants duly obeyed and went to the Police Station. Therefore, Supreme Court has held that having regard to the role, status and duties of the Advocates as a professional, it was of the

opinion that the legal profession is sui generis i.e. unique in nature and cannot be compared with any other profession.

9. When the impugned order is perused, it is seen that learned Trial Court has merely quoted the case laws which have been cited by Applicants in paragraph No. 6 of the impugned order. They have not been considered at all. Apart from merely quoting the citations of the cases, there is absolutely no discussion whatsoever by the learned Trial Court in trying to ascertain as to whether any obstruction was indeed caused by Applicants. It is seen that when the police arrived at the incident spot, if the Applicants would have refused to leave the said spot and accompany the police and created ruckus in continuing with the search operations that would have amounted to obstruction but the Applicants did not do so. The moment police Officers arrived at the spot and they asked Applicants to accompany them to the Police Station, Applicants immediately obeyed the orders of the police Officers and went with them. The act of the Applicants' presence at the incident spot did not lead to stopping of the search operation as nothing of that sort has been recorded in the statements of the five CBI Officers which has been recorded by the Investigating Officer. It is seen that a substantial period of 17 years has passed since the date of the incident. Lives of three Applicants before me who are professional Advocates at the Bar

today have been stigmatized because of the stigma of accused attached to their names for the past 17 years. If there had indeed been an obstruction on the part of Applicants, the FIR which has been recorded and the statements of five CBI Officers which have been recorded ought to have been differently worded. Impugned order proceeds simply on the basis that there is *prima facie* material evidence on record for rejection of the Application. What is material has not been elaborated or even attempted to be discussed by the learned Sessions Court. In paragraph No. 9 of the impugned order a mere finding of the prosecution having *prima facie* material has been stated for rejection of the Discharge Application. How long can the Applicants suffer the hanging sword of damocles on their heads of they having been arraigned as accused in the present case in the given facts and circumstances of the present case is the question before me? I must equally appreciate the manner and conduct in which the present case has been argued by the learned APP on the basis of the material placed on record as she has not attempted to overreach something which is not found the statements. All that the impugned order states that statements of five CBI Officers which are recorded have been taken into account and when considered *prima facie* case is made out for application of Section 353 IPC in the present case. On perusing the same record, I do not find any material whatsoever

present therein which can be applied for indicting the Applicants for obstructing the CBI Officers. In the case of ***Amit Kapoor Vs. Ramesh Chander***[2], the Supreme Court has laid down the principles to be borne in mind for proper exercise of jurisdiction under Sections 397 or 482 Cr.P.C, particularly in the context of quashing of charge. One of the principles on which revisional jurisdiction can be exercised is that if the allegations are patently so absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. In paragraph No. 27.2 onwards Supreme Court has culled out the relevant principles which reads thus:-

> *"27.2 The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*
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> *xxxxxx*
>
> *27.3 The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*
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> *xxxxxx*
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> *27.9 Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an*

2 (2012) 9 SCC 460

> *offence and, if so, is it an abuse of the process of court leading to injustice.*
>
> *xxxxxx*
>
> *27.15 Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e., to do real and substantial justice for administration of which alone, the courts exist."*

10. It is seen that while finding out the elements of offence under Section 353 IPC, the test is whether the Officer at the time of assault was lawfully discharging his duty imposed on him. Force or assault must be directed towards him. In the present case all that happened between the parties is exchange of mere words namely by the Applicants on the one side and Mr. Bhalchandra Chonkar, Police Inspector, ACB, CBI on the other side representing CBI. Explanation to Section 353 IPC therefore clearly covers the facts of the present case as there is no threat or assault made by any gestures or preparation and hence the Applicants stand to be exonerated in the present case. There is absolutely no evidence whatsoever in the statements of the five CBI Officers which have been recorded that Applicants allegedly assaulted them by using criminal force against the public servants i.e. the CBI Officers who were discharging their duty as public servants. Mere restraint of an official would not amount to an offence under Section 353 of IPC. Nature of restraint is crucial. Asking the CBI Officers to show their identity cards is not restraining them from

carrying out their duty. This is the only thing that has transpired in the pesent case leading to the indictment of Applicants. Applicant No. 1 was the Advocate of the party concerned. Applicant Nos. 2 and 3 have unnecessarily suffered the consequences of the above action due to no fault of their.

11. In the present case, there is no restraint made by Applicants. Asking the CBI Officers to disclose their identity cards cannot be considered as an act of assault or criminal force. To bring home the offence under Section 353 IPC, prosecution is required to prove the essential ingredients of Section 353 IPC which are that the accused assaulted or used criminal force on them (CBI Officers), that the public servant at the time of the offence was acting in the discharge of a duty imposed on him by law as such public servant or that the offence was committed with intent to prevent or deter the Officer from discharging a duty imposed on him by law as such or that it was committed in consequence of something done or attempted to be done by the public servant in the lawful discharge of a duty imposed on him by law as such. In the present case none of the aforesaid ingredients have been proven *prima facie*. In that view of the matter, Criminal Revision Application deserves to be allowed.

12. The judgment of the Supreme Court in the case of ***Amer Khan Vs. State of Maharashtra and Ors.***[3] clearly directs that action under Section 353 IPC cannot be used casually by Government Officers. The Division Bench of this Court has in the case *Amer Khan (3rd Supra)* has analysed the constituents of an offence under Section 353 IPC. In paragraph Nos. 7 to 11 which are delineated for immediate reference herein below:-

> *"**7.** In order to appreciate the facts on record it needs to be seen as to what constitutes an offence under Section 353 of IPC which reads thus;*
>
> > *"**353. Assault or criminal force to deter public servant from discharge of his duty** - Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both."*
>
> ***8.** A plain reading of this provision indicates that first and foremost requirement for attracting rigour of this provision is that the public servant must be discharging his duty. Needless to say that such duty must be 'lawful'. Unlike in some other provisions, the "purported discharge of duty" by public servant, is not contemplated herein. Hence for making this provision applicable, the discharge of lawful duty is a condition precedent.*
>
> ***9.** Further, in order to attract the said provision there must exist assault or use of criminal force against public servant to prevent or deter that person from discharging his lawful duty.*
>
> > *• Section 349 of the IPC defines criminal force as;*
> >
> > *"**349. Force** - A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body,*

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> *or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling:*
>
> *Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:*
>
> *First.- By his own bodily power.*
>
> *Secondly.- By disposing any substance in such a manner that the motion or change or cessation of motion take place without any further act on his part, or on the part of any other person.*
>
> *Thirdly.- By inducing any animal to move, to change its motion, or to cease to move."*
>
> ***10.*** *The above definition clearly shows that there can be said force, to use of only when one makes another to cause motion, change of motion or cessation of motion in one of the three ways expressly provided therein i.e. by his own bodily power or by disposing any substance in such a manner that the motion or change or cessation of motion takes place and inducing any animal to move to change its motion or to cease to move. In absence of adoption of any one of three ways or in absence of causing of motion, change or cessation thereof, above definition would not attract.*
>
> ***11.*** *Criminal force as defined in Section 350 indicates that whoever intentionally uses force to any person, without that person's consent, in order to commit 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."*

12.1. In paragraph No.19 of the aforesaid decision, it is concluded that the provision of Section 353 IPC has been enacted to make sure that public servant is not being obstructed or deterred from performing his lawful duties and by no stretch of imagination same can be allowed to become a tool in hand of unscrupulous persons to cover up outright illegality as is been done in the present case. In order to attract offence under this provision there must exist element

of lawful discharge of duties by public servant, which has been negated in the findings of the Trial Court in the case emanating from the first FIR.

13. In view of the above observations and findings, the impugned order dated 25.06.2024 is not sustainable and is quashed and set aside. Application for Discharge below Exh. 13 of the three Applicants before me is allowed.

14. This is a classis case of abuse of powers exercised by the CBI Officers / staff. On the strength of their own statements and FIR that is registered, on the face of the allegation the alleged claim of the complainant can never be proven under Section 353 IPC. Assault, criminal force, obstruction of a government servant and preventing search operation to continue cannot be proved or proven by the prosecution as there is virtually no such allegation. Only because the CBI Officer Police Inspector, ACB,CBI on being asked to show his identity card has irked the CBI Officers prompting him to immediately call the Police Authorities and get the Applicants arrested by foisting Section 353 IPC. The Police Authorities have also blindly played a subservient role to the CBI Officers by arresting the Applicants without application of mind about the applicability of Section 353 IPC. Result of which was that all three Applicants had to suffer incarceration for one night until they were bailed out on 04.11.2009.

15. This Court can only imagine what must have gone through the mind of a young college going law student i.e. Applicant No. 3 who was interning with Applicant No. 1's firm as a Law Intern at the then time to have suffered the ignominy, disgrace and infamy when at the threshold of stepping into this noble profession he was arrested. Applicant No. 3 is present before me and is now a practising Advocate at the Bar. He is 38 years old today. That apart, both Applicant Nos. 1 and 2 have also clearly suffered due to the complaint filed under Section 353 IPC for being labelled as accused and being on bail for the last 17 years. The best years in the life of the Advocates / Applicants before me have been spent in anxiety and running from Court to Court to vindicate their names and seek exoneration.

16. These are very strong facts. It is clear and an undoubtable case of wounded ego and affront caused to the CBI Officer when he was asked to show his identity card and identify himself which led to subsequent events and complaint against Applicants under Section 353 IPC. There is nothing on record and even in the FIR or the statements of four (4) CBI Officers / Staff recorded by the Investigating Officer to show use of assult, criminal force, obstruction and preventing the search which was carried out for the past 10 hours to stop or being halted by them. Rather, the Applicants left with Police for the Police station when told to do so and suffered illegal arrest for acts which

they did not even comprehend or do. Applicants having suffered for 17 long years over the above issue at the hands of the State is a serious issue.

17. I am therefore inclined to direct the Respondent-State to pay costs of Rs. 15,000/- to each of the three (3) Applicants before me as costs awarded by the Court for their ignominy and sufferance of 17 long years. The costs shall be paid by the State to the Applicants within a period of four (4) weeks from today.

18. The costs are awarded in order to send a clear message to the Law Enforcement Agencies to ensure that legal provisions are not misused by them so as to cause irreparable hardship and sufferance to the common man and citizens of this country and that Rule of law prevails.

19. In the present case, it is clearly seen that there is no question of any assault by way of making any gestures or any preparation by the Applicants for the CBI Officer Mr. Chonkar to apprehend that Applicants would use criminal force on him.

20. It shall however be open for the Respondent-State to recover the aforesaid amount of costs paid to the three (3) Applicants as directed from the First Informant complainant, Mr. Bhalchandra M. Chonkar, Police Inspector, ACB, CBI in accordance with law.

21. Criminal Revision Application stands allowed and disposed in the above terms.

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA MOHAN AMBERKAR

Digitally signed by RAVINDRA MOHAN AMBERKAR
Date: 2024.11.21 18:18:16 +0530