
(2023) 04 BOM CK 0017

In the Bombay High Court

Case No : Criminal Writ Petition No.4181 Of 2018

Avijit Michael

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 05-04-2023

Acts Referred:

Indian Penal Code, 1860 — Section 186
Information Technology Act, 2000 — Section 43(f), 66

Citation : (2023) 04 BOM CK 0017

Hon'ble Judges : Sunil B. Shukre, J;M.M. Sathaye, J

Bench : Division Bench

Advocate : Gayatri Singh, Vijay Hiremath, Surya Kale, K.V. Saste, Vijay Ghodia

Final Decision : Disposed Of

Judgement

Sunil B. Shukre, J

1. RULE. Rule made returnable forthwith. Heard finally by consent of learned counsel for the petitioner, learned counsel for respondent no.2 and learned APP for the respondent-State.

2. With the assistance of learned counsel for the petitioner and learned APP for the respondent-State, we have gone through the FIR and the other material available on record, which is forming part of the paper-book of this petition.

3. We are of the view that the allegations made in the FIR, when taken at their face-value, do not, in any manner, constitute the offence punishable under Section 186 of the IPC. These allegations, when accepted as they are, also do not indicate commission of any offence as is contemplated under Sections 43(f) and 66 of the Information Technology Act, 2000.

4. In order to constitute any offence punishable under Section 186 of the IPC, it is necessary that there must be a public servant who is voluntarily obstructed by another in discharge of his public functions and such obstruction must have

direct connection with the discharge of public functions of such public servant. This offence would also indicate that it is for the public servant who has been obstructed in discharge of his public functions to voluntarily come forward and allege the obstruction.

5. In the present case, the alleged obstruction has been caused to a public servant by name Smt. Ashwini Bhide, a Member of the Indian Administrative Service, who was at the relevant time working as Managing Director of Mumbai Metro Rail Corporation, which corporation was then engaged in construction of a car-shed in the land belonging to Aarey Dairy and this work envisaged cutting of several trees. The allegation is that certain messages were received on the official cell phone of Smt. Ashwini Bhide, due to which she felt offended and obstructed in discharge of her official functions and when she blocked the number from which she had received those messages, Smt. Ashwini Bhide received some messages from a different mobile number. This is how, in the opinion of the complainant i.e. respondent no.2, Smt. Ashwini Bhide was obstructed in discharge of her public functions. But, Smt. Ashwini Bhide does not herself come forward and make any such allegations. The complainant, i.e. respondent no.2, has not stated in his FIR that he had received information regarding commission of the said offence directly from Smt. Ashwini Bhide. There is nothing on record which shows that Smt. Ashwini Bhide had written to the respondent no.2 and informed him about the alleged obstruction being caused to her by the person sending messages to her from certain mobile number, which is alleged to be belonging to the petitioner. No efforts to find out the source of information of respondent no.2 regarding commission of this cognizable offence has been made by the Investigating Officer and, therefore, it is still not known as to whether or not there was any such information available as was sufficient to disclose commission of a cognizable offence so necessary for registration of the FIR in accordance with the provisions of the Code of Criminal Procedure, 1973.

6. Apart from what is stated above, we find that the alleged offending messages, when understood as they are, without adding anything thereto or subtracting anything therefrom, do not by themselves show that the sender of those messages had at any point of time intended to obstruct Smt. Ashwini Bhide or had any knowledge that by those messages, he would create the effect of obstructing Smt. Ashwini Bhide from discharging her public functions. These messages show at their face-value that the sender of the messages was the person who had intention to make efforts for preservation of the trees in the larger interest of society. He had stated in those messages that Aarey Forest was a green lung for the city of Mumbai just as Cubbon Park is for the city of Bangalore and, therefore, he has pleaded with Smt. Ashwini Bhide to look for alternatives so that the trees, which he has stated to be about 3,500 in number, can be saved. In order to have more clarity on the issue, the alleged offending messages are reproduced as below :-

(1) Cubbon Park is considered the lung of Bangaluru so is Aarey forest for

Mumbai. 3500 trees in Aarey forest will be cut to build a metro car shed, if we don't RAISE OUR VOICE. Ask CM Fadnavis & Ashwini Bhide, MD of Mumbai Rail Corporation to look for alternatives. MISSED CALL 08030630959.

(2) Today Mumbai's green lungs need your help. 3500 trees in Aarey forest will be cut to build a metro car shed if we don't RAISE OUR VOICE. Ask CM Fadnavis & Ashwini Bhide, MD of Mumbai Rail Corporation to look for alternatives.

(3) Please FWD to 5 friends – Join 1.8 lakh Indians to protect MUMBAI'S LUNGS. Ask CM Fadnavis & Ashwini Bhide, MD of Mumbai Rail Corporation to look for alternatives before even 1 tree of 3500 trees in Aarey forest get cut for building metro car shed. MISSED CALL 02233492100 – Jhatkaa.org.

(4) Aarey forest is considered the lung forest for Mumbai. 3500 trees in Aarey forest will be cut to build a metro car shed if we don't RAISE OUR VOICE. Ask CM Fadnavis & Ashwini Bhide, MD of Mumbai Rail Corporation to look for alternatives. MISSED CALL 08030630959.

7. It would be clear from the above referred messages that the sender of those messages, who is stated to be the present petitioner, had acted in a bona fide manner, on the basis of what he believed to be an act which was necessary for maintaining the health of the city of Mumbai. His intention appears to be to protect the forest, he considers to be acting like a pair of lungs for the city of Mumbai. These messages do not contain any offensive material or any obscenities. Rather, they appear to have been sent in assertion of a democratic right of citizen of this country to put forth his view point, to object, to protest, to persuade, to urge, and so on. It then follows that if anybody is booked for criminal offences such as those as have been registered against the present petitioner, it may amount to an invasion upon the rights of the citizens of this country. Such an effort by any complainant, howsoever high he or she may be in position, cannot be countenanced and must be stopped. Upon such a complaint, as the one involved here, police must never book any ordinary citizen of the country under criminal law and if it does, it would be like suppressing his voice against what he considers to be a wrongful thing. We, therefore, find that no offence under Section 186 IPC is made out against the petitioner.

8. As regards remaining offences, we find that, by no stretch of imagination, any offence punishable under Section 43(f) or 66 of the IT Act is made out in the present case. For Section 43(f) offence, there has to be some denial of access to any person authorized to access any computer or computer system and for an offence punishable under Section 66, something must have been done dishonestly or fraudulently, and that something must relate to accessing any computer or computer system or unauthorized downloading or copying of computer data or other similar acts. By sending the alleged offending messages, none of these acts can be said to be committed by the petitioner. Therefore, even for these offences, no prima facie case is made out against the petitioner.

9. In view of above, we find that no offences whatsoever are disclosed as against

the petitioner and that this is a fit case for making interference by issuing necessary caution to the Investigating Officer.

10. Petition is allowed and the FIR registered vide Crime No.18 of 2018 dated 6/7 18th January 2018 at Bandra-Kurla Complex Police Station, Mumbai is hereby quashed and set aside. The Investigating Officer, who registered Crime No.18 of 2018 against the petitioner, is hereby cautioned to be careful in registering crimes in such matters in future.

11. Rule is made absolute in the above terms. Petition is disposed of.