



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.372 OF 2024

Farukh Shah s/o Anvar Shah,
Age-50 years, Occu:Business,
R/o-Plot No.6, Gajanan Colony,
Gafur Nagar, District-Dhule.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through its Police Inspector,
Chalisingaon Road Police Station,
Dhule, District-Dhule,
- 2) Rohit Bhanudas Chandole,
Age-34 years, Occu:Social Worker
(Advocate), R/o-Galli No.14,
Subhash Nagar, Old Dhule, District-Dhule.

...RESPONDENTS

...
Mr. S.S. Kazi Advocate for Applicant.
Mr. A.R. Kale, A.P.P. for Respondent No.1 – State.
Mr. Chetan B. Chaudhari Advocate for Respondent No.2.
...

CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.

DATE OF RESERVING ORDER : 11th JUNE 2025

DATE OF PRONOUNCING ORDER : 25th JUNE 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed for quashing the First

Information Report (for short "the FIR") vide Crime No. 167 of 2023 registered with Chalisgaon Road Police Station, Dhule on 19th June 2023 for the offence punishable under Sections 153-A, 295-A, 504, 505 (1), 506, 124(A), 120-B, 404 read with Section 34 of the Indian Penal Code, Section 3 and 4 of the Maharashtra Prevention of Defacement of Property Act, 1995.

2. Heard learned Advocate Mr. Kazi for the applicant, learned APP Mr. Kale for respondent No.1 and learned Advocate Mr. Chaudhari for respondent No.2.

3. Learned Advocate for the applicant submits that respondent No.2 has filed the impugned FIR with *mala fide* intention. There is admittedly the political rivalry. It is stated that the present applicant had constructed a raised platform without obtaining any permission and named it as 'Tipu Sultan Chowk'. The informant says that this act on the part of the applicant has created hatred amongst two communities. Learned Advocate appearing for the applicant then relies on the supplementary statement, which is stated to have been recorded on 27th October 2023, of the informant stating that there should be an addition of Section 7 of the Prevention of Corruption Act, as there is misuse of powers thereby causing corruption. It is stated

that the applicant is admittedly the Member of Legislative Assembly (M.L.A.) and therefore, he cannot undertake the activities of construction in the road without permission of the Government and he has utilized the Government funds for the said purpose. In fact this shows political score tried to be meted by respondent No.2, who is admittedly from rival political group. There is no question of offence under Section 153-A, 295-A, 504, 505(1), 506 of the Indian Penal Code getting involved in the matter. Tipu Sultan was the freedom fighter of India and great warrior and therefore, giving name of the said person cannot attract any criminal prosecution.

4. Per contra, the application has been objected by learned APP as well as learned Advocate for respondent No.2. Learned APP strongly submits that, as to how and in what manner the alleged copy of supplementary statement came in possession of the applicant, is a question to be investigated. Upon query of this Court, the Sub Divisional Police Officer, Dhule City, Sub Division, Dhule, had placed on record the communication dated 22nd April 2025, wherein he has specifically stated that copy of any of the prosecution papers have not been provided to the applicant. At this stage, there appears to be some evidence to show that there was a construction made in the chowk which was

demolished. The applicant had not taken any efforts to see that illegal construction is not made. It is on record of the investigation papers that the said illegal construction was made in the supervision of one Shah Afsar Ahmed Akil Ahmed, who is in the relationship of the present applicant. There is also some evidence to show that the accused has made abusive comments on his social media Facebook account and Instagram against Shri Vinayak Damodar Savarkar and Shri Chhatrapati Shivaji Maharaj. Investigation is still going on. It will not be then appropriate to exercise the powers under Section 482 of the Code of Criminal Procedure.

5. Before we proceed further, we would like to place the facts on record that when we had heard the matter on 2nd April 2025 and the alleged supplementary statement of the informant dated 27th October 2023 was pointed out, we had expressed that the said supplementary statement does not bear the signature of the person who had taken it down and how the copy of the same is in possession of the applicant and therefore, learned APP wanted to get the instructions and hence the matter was adjourned. On 23rd April 2025, the said letter/report given by the Sub Divisional Police Officer, Dhule City on 22nd April 2025 to the learned APP was placed on record, wherein it was specifically stated that no

copy of the statement styled as supplementary statement of the informant was given to the applicant. He has also stated that he had ordered inquiry, as to how the applicant had got the copy of the supplementary statement and in fact whether the said supplementary statement was recorded or not. Then the learned Advocate for the applicant sought time to file affidavit of his client to disclose the source of the document at page No.35 of the application, styled as, supplementary statement. Accordingly, the affidavit has been filed and then it is stated that the said document was uploaded on the Facebook of the informant and from that site it has been downloaded by the applicant. We are afraid for the reason that the said document has been endorsed as true copy and unless the learned Advocate himself has not seen the copy or has not taken instructions regarding the source of that document from where his client has fetched that, he ought not to have endorsed it as true copy. When we pointed out this fact and asked the learned Advocate for the applicant about the same, he has tendered apology. The facts still remain that when the police officers disclose that there is no such document in existence nor it was given to anybody, the question would still be, as to how either the informant or the applicant got such document. The said Sub Divisional Police Officer, Dhule City has

stated that he has ordered an inquiry. We hope that the inquiry would be completed. It is absolutely not proper on the part of a party to produce a document by obtaining the custody of such document in otherwise manner. It is the bounden duty of the Advocate representing such party to consider whether the said document has come to his client by legal means or not. Merely because his client is asking him to produce, the Advocate should not run the risk of producing such document before any Court of law where he cannot explain the source from which the client has fetched the document. The applicant was elected as M.L.A., as a candidate from a political party. Merely because there is a rivalry, we cannot see the FIR in the tainted manner and the sitting M.L.A. then should secure the document in otherwise manner and should not disclose the source thereof to his Advocate at the time of filing of the Application. We deprecate such practice.

6. The fact is that now the investigation is still going on and who had erected the construction in the chowk, whether permission to construct was obtained or not, whether the funds which were available for M.L.A. were utilized for making that construction, the investigation is underway. All the persons including the persons attached to political party are required to

obtain construction permission under the local bylaws of the local municipal authority. A public square (chowk), road or place cannot be named by the M.L.A. on his own. There is a procedure under the Maharashtra Municipalities Act as well as Maharashtra Municipal Corporations Act, wherein the proposal is required to be tabled before the concerned authority i.e. the general body meeting of the elected members and then after the consensus, such place would be named accordingly. Now the applicant at one place, i.e. in Ground No. (VIII) of the Application, is supporting the act of naming the square in the name of Tipu Sultan and in Ground No. (IX) he is claiming innocence. Both these acts cannot go together. When the investigation is still going on and from the report of the police it appears that there is some evidence, whether it is connected with the applicant or not would be a different question, but in the said circumstances it cannot be said that this is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure.

7. The Application stands rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE