MHCC030008062025

IN THE COURT OF CITY CIVIL AND SESSIONS AT GRATER BOMBAY
COURT ROOM NO.23
(Presided over by Shri. K. M. Jaisingani, Additional Sessions Judge)

ORDER BELOW EXH.4
IN
SESSIONS CASE NO.1486 OF 2025

Prosecution :	The State of Maharashtra, Through Chembur Police Station, Mumbai.
	VERSUS
Applicants/ Accused :	Tushar Vitthal Kadam and Another

Mr. Sandesh V. More, learned Advocate for applicants/accused.
Ms. Ratnavali Patil, learned APP for the State.

O R D E R
(Delivered on 21/08/2026)

1. Accused have filed present application under Section 227 of Code of Criminal Procedure.

2. Accused are charge-sheeted in Crime No.53/2024 for the offence punishable under Section 353 read with 34 of Indian Penal Code registered with Police Station Chembur.

3. The case of prosecution is that on 09.02.2024, the informant Mr. Kishor Shrawan Kamble was attached to BMC, 'M' Ward East, Chembur, Mumbai in Water Department as an Operator. Since October 2021, he was appointed as Booth Level Officer for Chembur Vidhansabha Matadar Sangha-173. On 09.02.2024, at about 02.00 pm. to 02.30 pm. he had been to R. C. Marg, Chembur, Mumbai with his

team for awareness about EVM machine and VVPAT. During the work of awareness and demo, the accused in furtherance of their common intention obstructed them by misguiding persons present there. On account of pressure of accused, the informant and his team had to stop that awareness programme.. So the informant lodged report of the incident with Police Station Chembur.

4. Accused have claimed discharge on the following grounds:

i)	They have good reputation in the society and they are implicated in a false case.
ii)	The prosecution has not produced any evidence against accused.
iii)	There is no sufficient evidence/material/proof to frame charge against accused.
iv)	The witnesses enlisted are interested witnesses.
v)	Police machinery has not carried out fair investigation.
vi)	Accused have good case on merits and there is likelihood of their acquittal after trial.

5. Heard both sides. During course of argument, the learned advocate representing accused submitted that the charge-sheet allegations do not constitute offence under Section 353 read with 34 of IPC. At the time of incident, police personnel were present on the spot of incident. Commission of offence charge-sheeted is not possible in presence of police personnel. There is no any evidence produced with charge-sheet to show that whatever work the informant was doing was part of his legal duty. Accused have not obstructed the informant and his other office staff. There is no any evidence produced by the prosecution with the charge-sheet so as to frame charge against the accused. By such submissions, the learned advocate prayed for

discharge of accused.

6. On the contrary, the learned APP submitted that there are no grounds made out for discharge of accused so she prayed for rejection of application.

7. Section 227 of Code of Criminal Procedure, 1973 (corresponding Section 250(2) of Bharatiya Nagrik Suraksha Sanhita, 2023) empowers the Court to discharge the accused if the Court considers that there is no sufficient ground for proceeding against the accused.

8. Any application for discharge can be allowed when there is no sufficient ground for proceeding against the accused. The grounds urged in the application are that there are interested witnesses which the prosecution intends to examine and there is no fair investigation. But those grounds relate to the merits of the defence of accused which cannot be dealt with while deciding of the present application.

9. Similarly, about the discharge of legal duty by the informant, no possibility of commission of offence in presence of police etc. are also part of merits of the case which cannot be gone into while deciding the present application. On the contrary, at this stage, it transpires from charge-sheet allegations that at the time of incident, the informant and his team were discharging their public duties to which the accused obstructed. So at this stage, there is no force in the grounds raised in the application.

10. On perusal of charge-sheet allegations, it appears that during awareness and demo of EVM and VVPAT, the accused obstructed the informant and his other team members. Charge-sheet allegations

transpire that the accused spread misunderstanding amongst persons present during awareness and demo as well as they avoided to listen the police and continued to oppose the awareness programme. Further, it transpires that the accused forcibly compelled the informant to stop the work/duty which he was discharging. The charge-sheet allegations transpire involvement of accused in commission of offence relating to obstruction to the informant in discharge of his public duties. So considering of these facts, I have come to the conclusion that there are sufficient grounds for proceeding against the accused. So accused are not entitled for discharge.

11. For the purposes of further discussion, it is desirable to describe here the relevant provisions. Section 353 of IPC deals with punishment for assault or use of criminal force to deter public servant from discharge of his duty. Section 351 of IPC has defined the term assault. Both the said provisions run as under:

> 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.

> 351. Assault.—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 to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

(a) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault,the gesture explained by the words may amount to an assault.

12. On bare reading the Section 227 of Code of Criminal Procedure, 1973 (corresponding Section 250(2) of Bharatiya Nagrik Suraksha Sanhita, 2023), it is clear that for deciding discharge application, the Court has to examine the record of the case and the documents submitted therewith by the prosecution. The charge-sheet allegations transpire about spreading of misunderstanding by accused amongst the persons present in the programme, raising dispute by them

with the informant and his team, their omission to listen the police and their force to stop the work/public duties which are sufficient grounds to proceed against the accused. On the perusal of charge-sheet it transpires that there are sufficient grounds for proceeding against the accused. So applicants have no right to ask for discharge as prayed for. The application is liable to be rejected. In result, I pass the following order:

ORDER

Application is rejected.

KAMAL MOHANLAL JAISINGANI
Digitally signed by KAMAL MOHANLAL JAISINGANI
Date: 2026.08.21 17:46:17 +0530

Date : 21.08.2026



(K. M. Jaisingani)
Additional Sessions Judge,
CR.No.23, Gr. Mumbai.

Dictated on :21.08.2026
Checked on :21.08.2026
Signed on :21.08.2026

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER"

21.08.2026 at 5.44 p.m.
UPLOAD DATE AND TIME

Shri. Vijay Ananta Shinde
NAME OF STENOGRAPHER

Name of the Judge (with CR No.)	HHJ K. M. JAISINGANI (C.R.No.23)
Date of announcement of Order	21.08.2026
Order signed by P.O. on	21.08.2026
Order uploaded on	21.08.2026