

**In the Court of Additional Sessions Judge, Rahata,
Dist. Ahmednagar.
(Presided over by Rajesh S. Gupta)
Order below Exh. 19 in Sessions Case No. 66/2024
(MHAH300002432020)**

The State of Maharashtra ... Prosecution.
- Versus -
Tejas Bhaskar Dhembare & Anr. ...Applicants/accused

Appearance :

Ld. APP Shri. B. D. Pangavhane for prosecution.
Ld. Advocate Shri. R. B. Gandhi for applicants/accused.

**Application is heard on 09.06.2025
Application is decided on 09.06.2025.**

1. Applicants/accused have filed this application for discharge U/Sec. 195 of the Cr.P.C. alongwith section 186 of the IPC, in Sessions Case No. 66/2024 in C.R. No. I 01/2015, registered with Shirdi police station for the offences punishable under Sections 353, 504, 506 read with section 34 of Indian Penal Code, 1860.

2. It is necessary to mention in the instant case crime was reported and investigated for the assault and criminal force used against the public servant, a traffic police while discharging his duty. It is further to be taken note investigation was completed, charge-sheet is filed against both the accused. The charge came to be framed on 26.03.2019. The trial proceeding was initiated, two witnesses are examined and the matter was pending for examination of further witnesses. During the pending trial as to the notification imposed in view of amendment the matter was transferred before the Sessions Court. In the meanwhile, the present application came to be filed for discharge on the basis as to the Court is debarred

from taking cognizance in view of provision under section 195(i)(a) of the Code of Criminal Procedure, 1973.

3. Ld. Advocate for applicants/accused submitted that applicants are innocent, implicated in false case. It is their submission that the FIR is reported by complainant first informant, being a public servant employed in Traffic Police Department. It is a submission that the category of the offence was within definition of section 195 of the Code of Criminal Procedure, 1973 and as per the provision, the complaint ought to have been filed before the Court for the process. The public servant without approaching the Court, he directly filed the complaint at police station and FIR came to be lodged.

4. It is urged that section 195 Cr.P.C. deals with the offences to be initiated for the charges u/s. 172 to 188 IPC. It is a submission that section 186 of the IPC includes the criminal assault and force used on public servant while discharging legal official duty. It is their contention as the prosecution has failed to implead section 186 of the IPC and therefore, the subsequent offence u/s. 323, 353 IPC would not be made applicable in the instant case.

5. It is argued that section 195 of the Code of Criminal Procedure, 1973 provides the complaint is to be filed before the Court for the initiation of any criminal proceeding by the public servant for alleged occurrence of crime. It is further submission that the fact primarily discloses the character of offence pertains to public servant and therefore it was necessary for the prosecution to implead section 186 readwith 195 of the Cr.P.C. It is argued that failure to implead the necessary sections regarding the incident

occurred against the public servant for which cognizance has been taken by the trial Court is illegal and cannot be sustained in the eyes of law and hence, the accused persons may be discharged, resultantly, after examination of the witnesses, it may be effected as acquittal of the accused persons. In support of the argument placed reliance on -

1. **Radhey Shyam Gupta Vs. The State, 1966 STPL (LE-Crim) 31786 ALL Allahabad High Court.**
2. **Janki Prasad Tibrewal and Ors. Vs. The State of Bihar, 1974 STPL (LE-Crim) 19669 PAT High Court.**
3. **Sudalaimadam and Anr. Vs. The State, 1984 STPL (LE-Crim) 14555 MAD Madras High Court.**
4. **Mrityunjay Das Vs. State, 1986 STPL (LE-Crim) 13725 CAL Calcutta High Court.**
5. **Ashok Kumar Singh Vs. Suptd., Central Jail, Varanasi and Ors., 1985 STPL (LE-Crim) 14091 ALL Allahabad High Court.**
6. **Inder Sain and Anr. Vs. The State, 1981 STPL (LE-Crim) 16244 Del Delhi High Court.**
7. **C. Muniappan Vs. State of Tamil Nadu, 2011 (1) B Cr. C 197 (SC).**

6. I have carefully observed the guidelines noted by the Hon'ble Apex Court in the above cited authorities, the same will be considered while appreciating the merits of the case.

7. In addition to the above arguments, it is submitted the applicants/accused never assaulted complainant neither they abused the complainant humiliating while discharging their official duty nor used criminal force therefore, offences levelled against the applicants are not attracted in the instant case. In the charge-sheet there is no evidence against applicant, therefore, no case is made

out against applicant. There is no evidence against applicants to proceed further, hence applicants may be discharged.

8. On the contrary, the Learned APP filed say at Exh. 20 and strongly resisted the application on the ground that, the instant application is filed on imaginary grounds only with intent to prolong the hearing. I.O. has filed sufficient documentary/oral evidence against the applicant in charge-sheet. It is their submission that the category dealt into provision u/s. 195 of the Cr.P.C. deals on the different aspect wherein the offence is committed during legal proceedings wherein the accused commits a contempt of lawful authority. It is their submission that the complaint was reported before the police, which came to be reported as first information, investigation was carried out and charge-sheet was filed against both the accused. It is further submission that the offence u/s. 353 IPC is a cognizable offence and there was no bar for the police to register the complaint and report FIR. It is strenuously argued that in the instance case charge is framed, witnesses are recorded, and hence after framing of charge, there is no provision provided for discharge. The accused is required to approach Higher Court, if prejudiced caused. In support of the argument, he placed reliance on **Hon'ble Supreme Court in Directorate of Revenue Intelligence Vs. Rajkumar, in Cri. Appeal No. 1319/2013, decided on 17/04/2025**. In addition it is argued prima facie there appears a sufficient ground to frame the charge against the accused/applicant and hence, prayed to reject the application.

9. Heard the rival contentions of parties, the following points arise for my consideration :-

No.	<u>POINTS</u>	<u>FINDINGS.</u>
1.	Whether the applicants/ accused are entitled to be discharged ?	In the negative.
2.	What order ?	As per final order, application is rejected.

REASONS

Point Nos. 1 and 2:

10. It is apparent from the complaint the complainant is a public servant working in a Traffic Police Department, Shirdi. The incident had occurred on 01.01.2015, between 08:00 p.m. to 10:00 p.m. while the complainant was on public duty posted at Pimpalwadi Chauk. There was a ministerial visit during relevant time one motorcycle was accosted while passing through, the rider took up quarrel with the complainant and used a criminal force and abused in filthy language and deterred the public servant while discharging its official duty. The rider and pillion rider were adamant and threatened the complainant party. Both the accused were apprehended and brought to the police station and complaint was lodged.

11. The learned advocate for the accused/applicant vehemently argued that, the entire trial proceeding needs to be quashed as the taking of cognizance is itself illegal and hence, the further proceeding cannot be initiated on unlawful authority.

12. The sum and substance of the argument by the accused persons pertaining to section 195 of the Code of Criminal Procedure, 1973, it is submitted for the offence having ingredients within the garb of section 353 of the IPC cannot be initiated, unless

the charges are made u/s. 186 of the IPC, as the nature of the offence in both the sections is the same and therefore, the offence by waiving the ingredients of offence u/s. 186 IPC, the complaint cognizance cannot be taken, except on the complaint by public servant concerned.

13. It becomes incumbent to discuss section 195 of Cr.P.C. Section 195 of the Cr.P.C. states “Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance - (a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or (ii) of any abetment of, or attempt to commit, such offence, or (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate; (b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), [except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this

behalf, or of some other Court to which that Court is subordinate.]
[Substituted by Act 2 of 2006, Section 3 for "except on the complaint in writing of that Court, of of some other Court to which that Court is subordinate".

14. On careful reading of section 195 Cr.P.C. addresses a procedure for prosecuting settled offences it deals with offences related to contempt of lawful authority of public servants against, offences against public justice and offences relating to documents given in evidence. Specifically it restrict a Court's ability to take cognizance (notice) of certain offences unless a complaint in writing received from the public servant or the court self.

15. The restriction on cognizance under section 195(i) of Code of Criminal Procedure, 1973 bars a Court from taking cognizance of certain offences that directly impact the discharge of public servants duties, correlate with court proceedings and affect the administration of justice. A specific bar exists to offences involving documents produced in Court particularly when these documents are in the custody of the court (*custodia legis*). Section 195 Cr.P.C. is mainly dealt with prosecution for contempt of lawful authority of public servants for offences against public justice and documents given in evidence.

16. The scheme of section 195 Cr.P.C. mainly deals with 3 distinct categories of offences which have been described in clauses (a), (b) (i) and (b) (ii) and they relate to (i) contempt of lawful authority of public servant, (ii) offences against public justice and (iii) offences relating to documents given in evidence.

17. In the instant case admittedly the complainant being public servant deployed in traffic police department was assigned a traffic duty on the alleged day and time. The incident had occurred while he was discharging his public duty. The public servant was deterred and criminal force was used.

18. On this interpretation, it is further necessary to interpret provisions of section 353 IPC. Section 353 - “assault or use criminal force to deter public servant of discharge his duty”, whoever assaults or uses criminal force to any person being 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..... The offence is cognizable non-bailable and also not listed under compoundable offences.

19. The section 353 IPC clearly signifies, it holds a particular significance as it addresses the use of criminal force against public servant engaged in lawful execution of their duties, this section underscore the importance of protecting public servant and ensuring that they can perform their work without the threat of violence or intimidation. Section 190 of Cr.P.C. provides that a Ld. Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute a offence, (b) upon a police report of such facts and (c) upon information received from any person other than police officer or upon his own knowledge that such offence has been committed. Section 195 Cr.P.C. is sort of exception to this general provision which creates an embargo upon

the power of court to take cognizance of certain types offences enumerated therein.

20. At this stage putting rest on the further discussions which may cause prejudice to the prosecution as well as defence there appears a prima facie sufficient evidence to place the accused/applicants for trial.

21. The Hon'ble Apex Court in the case of **Karnataka Lokayukta Vs. M.R. Hiremath, reported in 2019 (7) SCC, 515** have observed that at the stage of considering the application for discharge the courts must proceed on the assumption that the material which has been brought on record by the prosecution should be true and court should evaluate the material in order to determine whether the facts emerging from the material, taken on its face value discloses the existence of ingredients necessary to constitute the offence.

22. The Hon'ble Apex court has held in **Govind Sakharam Ubhe Vs. State of Maharashtra, 2009 All Mah. Cri. 1903**, that court's inquiry at the stage of Section 227 of Cr.P.C. must not be directed to find out whether the case will end in conviction. However, though rowing inquiry is not permissible, the court can consider whether the material collected by the prosecution, the scales as to guilt or innocence of the accused are even then the court must proceed to frame a charge. There is no question of giving benefit of doubt to the accused and discharge the accused at that stage because the scales are even. That can be done only at the conclusion of trial.

23. In view of the language used in section 340 Cr.P.C. regarding commission of an offence referred under section 195(i) the section is condition by the words Court is of opinion that it is expedient in the interest of justice. The sections provided under 195(i) Cr.P.C. which are required to interpret is not a penal provision but is part of procedural law, viz. Cr.P.C. which elaborately gives the procedure for trial of criminal cases. The provision only creates a bar against taking cognizance of an offence in certain specified situations except upon complaint by Court. A penal statute is one upon which an action for penalties can be brought by public officer or by a person aggrieved and a penal act in its wider sense includes every statute creating an offence against the State, whatever is the character of the penalty for the offence. The principle that a penal statute should be strictly construed as projected and therefore, section 195 Cr.P.C. have no application in the instant case.

24. As already noted above in the present case, section 195 of the Code of Criminal Procedure, 1973 does not bar trial of the accused for the distinct offence under section 353 IPC, though it is practically based on the same facts asked for by the prosecution under section 186 of the IPC.

25. The Hon'ble Apex Court in the case of **Directorate of Revenue Intelligence (supra)**, it has been observed once the charges have been framed by the garb of under section 228 Cr.P.C., the accused cannot be discharged.

26. It is apposite each case should be considered in the light of its facts and circumstances, each case depends upon its own

factual scenario no exhaustive or mathematical formula of universal application can be laid down.

27. It is apposite to note at this stage it cannot be presumed that there is vague statement in complaint. The investigation is carried out with a strong belief and sufficient material to proceed against accused having involvement in the present crime.

28. Taking into consideration there is prima facie material against applicant/accused and the involvement in the crime, they have not made out the case for discharge. With due respect the authorities cited by the Ld. Advocate for the accused persons cannot be made applicable to give benefit to the accused. It is made clear the observations made herein are for the limited purpose for deciding the present application, it shall not have effect on merits of the case. In view of above circumstance, I pass the following order :-

ORDER

Application (Exh. 19) for discharge filed by applicants/
accused is hereby rejected.

Date : 09.06.2025

(Rajesh S. Gupta)
Addl. Sessions Judge, Rahata.