

2025:BHC-NAG:9454

*Judgment*

24-Cr.WP-240-2025

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 240 OF 2025

...

Amit Ashok Jagdale,
Aged 51 years, Occupation Service,
Resident of Government Polytechnic College,
Shendurwafa, Tahsil Sakoli, District Bhandara.

... **PETITIONER**

- - V E R S U S - -

State of Maharashtra,
Through Police Station Officer,
Police Station, Sakoli, Tahsil Sakoli,
District Bhandara.

... **RESPONDENT**

Mr. I.S. Charlewar, Advocate h/f Mr. K.E. Meshram, Advocate
for the intervenor.

Mr. A.M. Joshi, A.P.P. for Respondents.

CORAM : M.M. NERLIKAR, J.

DATE : SEPTEMBER 22, 2025.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Mr. A.M. Joshi, learned A.P.P. waives service for Respondent-State. With consent of learned Counsel for the parties, the petition is taken up for final disposal.

2. The present petition is being filed praying to quash and set aside the order passed by District and Sessions Judge, Bhandara in Criminal Revision No.38/2022 dated 04/02/225 and the order passed by Judicial Magistrate, First Class, Sakoli, in Summary Criminal Complaint No.366/2020 dated 20/04/2022. The petitioner is further praying to discharge him from the offences punishable under Sections 427, 504, 506, 352 and 294 of the Indian Penal Code, 1860, and Section 3 of the Prevention of Damage to Public Property Act, 1984.

3. Brief facts of the case are that:

On 02/07/2020, Smt. Asha Kadam, Office

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Superintendent at Government Polytechnic College, Shendurwafa, District Sakoli, lodged an FIR alleging that on the same day at around 3 p.m., the petitioner, accompanied by one Madhuri Nagdeve, entered her office and inquired about the petitioner's salary and General Provident Fund. After Madhuri left, the petitioner allegedly broke the office glass with a rod. The petitioner then went to the Principal's office, damaged the CCTV equipment, abused the Principal, and threatened to release the General Provident Fund. The petitioner is also accused of causing a loss of Rs.1,00,000/- and issuing threats. Consequently, First Information Report was filed against the petitioner under Sections 427, 504, 506 of the Indian Penal Code, 1860, read with Section 3 of the Damage to Public Property Act, 1984. During the course of investigation, statements of 14 witnesses were recorded, who corroborated the complainant's account, stating that the petitioner used abusive language and caused damage. Based on these statements, a charge sheet was filed, adding charges under

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Sections 294, 336, and 392 of the Indian Penal Code. The petitioner was granted bail and filed an application under Section 239 of the Code of Criminal Procedure for discharge, arguing that the charge-sheet lacked merit and failed to establish essential ingredients for the alleged offences. The Trial Court rejected this application, dropping Section 336 of Indian Penal Code finding insufficient material to proceed under Section 336 of the Indian Penal Code, but allowed charges to be framed under Sections 294, 427, 504, 506 and 352 of the Indian Penal Code read with Section 3 of the Prevention of Damage to Public Property Act. The petitioner then filed a revision petition before the Sessions Court, Bhandara, arguing that none of the charges were sustainable. The Sessions Court dismissed the revision and upheld the Trial Court's order. The petitioner has now filed the present petition, challenging both the Trial and Sessions Court orders and seeking discharge from the charges framed against him. On 20/04/2022, the Judicial Magistrate, First Class, Sakoli, was pleased to pass the following

order:

“ Charge be framed against accused for the sections 294, 427, 504, 506 and 352 of the Indian Penal Code read with section 3 of the Prevention of Damage to Public Property Act.”

Subsequently, on 04/02/2025, the Sessions Judge, Bhandara was pleased to pass the following order:-

“1. The Crim. Revision No.38/2022 stands dismissed.”

2. The Crim. Revision accordingly disposed of.”

4. The learned counsel for the petitioner submits that insofar as Section 294 of the Indian Penal Code (IPC) is concerned, no offence is made out even if the allegations are taken as it is. There is no material in the charge-sheet in order to attract the ingredients of Section 294. He further submits that both the Courts below failed to consider the purport of Section 294 and committed a grave error in not discharging the petitioner for the offence punishable under Section 294 of the

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IPC. In support of his contention, he has relied on the decisions of the Supreme Court in the cases of *Om Prakash Ambadkar VS The State of Maharashtra & Ors. (Criminal Appeal No.352/2020)*, decided on 16/01/2025, *N.S. Madhanagopal & Anr. VS. K. Lalitha (Criminal Appeal No.1759/2022)*, decided on 10/10/2022, and the decision of this Court, Bench at Aurangabad, in the case of *Dnyanoba s/o Nivrutti Thormote & Anr. VS. The State of Maharashtra & Anr. (Criminal Application No.2303/2018)*, decided on 19/10/2018.

5. On the other hand, the learned Additional Public Prosecutor (A.P.P.), submits that both the Courts below have taken into consideration the facts of the case, and after going through the material on record, passed a detailed order. The learned A.P.P. further submits that Section 294 is made out, as can be inferred from the statements of the witnesses. He argues that there is sufficient ground for framing the charge, and therefore, at this stage, the writ petition may not be

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entertained due to the lack of sufficient material against the petitioner.

6. Upon hearing both sides and upon perusal of the relevant material placed on record, including the copy of the charge-sheet, it appears that initially, the First Information Report (FIR) was registered for the offences punishable under Sections 427, 504 and 506 of the Indian Penal Code, 1860, read with Section 3 of the Damage to Public Property Act, 1984. After investigation, the charge-sheet was filed for the offences punishable under Sections 336, 294, 427, 504, 506 and 352 of the Indian Penal Code, 1860, read with Section 3 of the Prevention of Damage to Public Property Act, 1984. It further appears that the petitioner subsequently filed an application before the learned Judicial Magistrate, First Class, Sakoli, under Section 239 of the Code of Criminal Procedure (Cr.P.C.) for discharge from the offences punishable under Sections 336, 294, 427, 504, 506 and 352 of the Indian Penal

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Code read with Section 3 of the Prevention of Damage to Public Property Act. By order dated 20/04/2022, the learned Judicial Magistrate partly allowed the application, dropping Section 336 of the IPC, but ordered that charges be framed against the petitioner for the offences under Sections 294, 427, 504, 506, and 352 of the IPC, read with Section 3 of the Prevention of Damage to Public Property Act. The petitioner challenged this order in Criminal Revision No. 38/2022 before the Sessions Judge, Bhandara, which was dismissed by an order dated 04/02/2025. Hence, the present writ petition was filed challenging both orders.

7. From the factual background, it is useful to refer to Section 294 of the Indian Penal Code, which reads as follows:

*“294. Obscene acts and songs —
Whoever, to the annoyance of others—
(a) does any obscene act in any public place, or
(b) sings, recites or utters any obscene song,
ballad or words, in or near any public place, shall be
punished with imprisonment of either description for a*

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term which may extend to three months, or with fine, or with both.”

It is important to note the opening line of Section 294, which states that, whoever, to the annoyance of others, does any obscene act in any public place, or sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished. Two particular ingredients are required to be attracted:-

- (i) The offender has done any obscene act in any public place, or sings, recites or utters any obscene song, ballad or words, in or near any public place, and
- (ii) has so caused annoyance to others

8. From the material on record, it is clear that the petitioner damaged property by breaking glasses and also damaged a TV with the help of rod. Additionally, the petitioner used filthy language and abused the principal, resulting in an

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estimated loss of Rs. 1,00,000. Upon perusal of the First Information Report as well as the statements as stated *supra*, no doubt, many statements are recorded by the Investigating Officer, wherein, there are eye witnesses to the incident. It could be gathered from the materials placed on record that, the petitioner has damaged the property as well as threatened the concerned persons and also abused and used filthy language, however, in none of those statements it was mentioned that anyone was annoyed by the act of the petitioner. For ready reference, the following is the version of one of the witness:

“ दि. 02/07/2020 रोजी मी दुस-या माळ्यावर *National Board of Accreditation* बाबत मिटींग सुरु होती. दुपारी 03.00 वा. सुमारास कार्यालयीन प्रबंधक श्रीमती कदम ह्या घाबरलेल्या अवस्थेत मिटींगमध्ये आल्या. त्यांनी जगदळे सर हातात रॅड घेवुन कार्यालयात तोडफोड करित आहेत लवकर चला असे सांगितल्याने मी तात्काळ त्यांचेसोबत माझ्या कार्यालयाकडे गेलो. माझ्या कार्यालयासमोर सुरक्षा रक्षक हजर होते. श्री जगदळे हे मला जीपीएफ कब देगा, साले एक दिन मे जीपीएफ नही दिया तो मार डालूंगा मादरचोद साले लवडे के बाल अशा प्रकारच्या शिव्या देत होते. त्यावेळी प्राध्यापक श्रीमती माधुरी नागदेवे व बडोले हे त्यांचे जवळ हजर होते. तसेच तेथे महाविद्यालयातील कर्मचारी व सुरक्षा रक्षक हजर होते. मी माझ्या कार्यालयात गेलो तेव्हा माझ्या कार्यालयातील माझ्या टेबलवरिल फोटो अस्ताव्यस्त पडलेल्या होत्या. तसेच माझ्या कार्यालयात सी.सी.टी.व्ही. चित्रीकरण पाहण्यासाठी लावलेला एल.जी. कंपनीचा 48

इंचाई. एल.ई.डी.टी.व्ही. जगदळे यांनी फोडलेला होता. तसेच कार्यालय प्रबंधक श्रीमती कदम यांचे कार्यालयातील टेबलवरिल काच, लिपीक कार्यालयातील कर्मचारी यांचे कॅबिनचे काचा फोडून अंदाजे 1 लाख रुपयाचे नुकसान केले आहे. महाविद्यालयातील कोणीतरी पोलीसांना फोन केल्याने पोलिस तेथे आले. त्यांनी जगदळे यांना समजावून शांत केले. पोलीसांनी आपली कायदेशीर कारवाई केली कार्यालयातील श्रीमती आशा कदम यांनी जगदळे यांनी कार्यालयात तोडफोड करून नुकमान केले, शिवीगाळ व धमकी दिल्याने कारवाई करिता तक्रार दिली आहे.

हाच माझा बयान आहे, माझे सांगणेप्रमाणे सांगणकावर टंकलिखित केला. प्रिंट काढून वाचून पाहिला बरोबर आहे.”

9. Under these circumstances, it would be useful to refer to the Judgment of the Supreme Court in ***N.S. Madhanagopal & Anr. VS. K. Lalitha (supra)***. While considering the scope of Section 294, the Supreme Court has observed as under:

“ It is to be noted that the test of obscenity under Section 294(b) of the I.P.C. is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences.

It has to be noted that in the instance case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to

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reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294 (b) of IPC is made out. ”

10. Further, in the said Judgment, the Supreme Court referred to another Judgment reported in ***P.T. Chacko VS. Nainan (1967 KLT 799)***, and reproduced the following paragraph, which reads thus :

“ The only point argued was that the 1st accused has not committed an offence punishable under Section 294(b) IPC., by uttering the words above-mentioned. The courts below have held that the words uttered were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In the Queen v. Hicklin, [L.R.] 3 Q.B. 360 at 371 Cockburn C.J. Laid down the test of ‘obscenity’ in these words:

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“..... the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences” This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881. In Samuel Roth v. U.S.A., 354 US 476 (1957), Chief Justice Warren said that the test of ‘obscenity’ is the “substantial tendency to corrupt by arousing lustful desires”. Mr. Justice Harlan observed that in order to be ‘obscene’ the matter must “tend to sexually impure thoughts”. I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are ‘obscene’ and the utterance would constitute an offence punishable under S. 294(b) IPC”.

11. Even in the case of *Om Prakash Ambadkar (supra)*, the Supreme Court considered the ingredients of Section 294 of the Indian Penal Code, placing reliance on the judgment of *N.S. Madhanagopal (supra)*. Similarly, in the case of *Dnyanoba s/o Nivrutti Thormote (supra)*, while considering the ingredients of

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Section 294 IPC, the Bombay High Court, Bench at Aurangabad, took into account the use of abusive and filthy language. While interpreting the word ‘obscene’, the High Court has taken help of Hicklin test, which was referred in the case of ***Regina V. Hicklin, (1868 L.R.2 Q.B. 360)***, wherein, it was observed that “*The test of obscenity is whether the tendency of the matter charged as obscenity is to deprive and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.*”

12. Thereafter, in the case of ***Aveek Sarkar and Another VS State of West Bengal and Others, 2014 STPL (Web) 72, SC***, it is held that Hicklin test is not correct test to judge what is ‘obscenity’ and it was further observed in Paragraph No.24, which is reproduced below:

“24. We are also of the view that Hicklin test is not the correct test to be applied to determine “what is obscenity”. Section 292 of the Indian Penal Code, of course, uses the expression ‘lascivious and prurient interests’ or its effect. Later, it has also been indicated in

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the said Section of the applicability of the effect and the necessity of taking the items as a whole and on that foundation where such items would tend to deprave and corrupt persons who are likely, having regard to all the relevant circumstances, to read, see or hear the matter contained or embodied in it. We have, therefore, to apply the “community standard test” rather than “Hicklin test” to determine what is “obscenity”. A bare reading of Sub-section (1) of Section 292, makes clear that a picture or article shall be deemed to be obscene (i) if it is lascivious; (ii) it appeals to the prurient interest, and (iii) it tends to deprave and corrupt persons who are likely to read, see or hear the matter, alleged to be obscene. Once the matter is found to be obscene, the question may arise as to whether the impugned matter falls within any of the exceptions contained in Section. A picture of a nude/semi-nude woman, as such, cannot per se be called obscene unless it has the tendency to arouse feeling or revealing an overt sexual desire. The picture should be suggestive of deprave mind and designed to excite sexual passion in persons who are likely to see it, which will depend on the particular posture and the background in which the nude/semi-nude woman is depicted. Only those sex-related materials which have a tendency of “exciting lustful thoughts” can be held to be obscene, but the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards. ”

13. Therefore, after considering the law laid down by the

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Hon'ble Supreme Court with respect to Section 294 of the Indian Penal Code, it is evident that the mere use of abusive, filthy, or unparliamentary language including the utterance of the words referred to above (in the Marathi language) is not sufficient, in itself, to attract the provisions of Section 294 IPC. Furthermore, it is pertinent to note that the statements recorded by the Investigating Officer do not indicate that any person was annoyed by such utterances. Even though statements of some female members were also recorded, accepting those statements as it is, the ingredients of Section 294 are not satisfied. Merely, because the word/s used may be humiliating or defamatory, those words by themselves are not sufficient to attract the offence under Section 294 of the IPC. It is further noted that, it seems from the FIR itself that the petitioner has committed offence, due to frustration over the non-payment of his retiral benefits and for that purpose he was questioning the principal and threatened to release the benefits of General Provident Fund (GPF).

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14. Therefore, considering the above facts and circumstances of the case, no *prima facie* case is made out to attract the provisions of Section 294 of the Indian Penal Code, as the petitioner has restricted the present petition only to the extent of application of Section 294. The discussion is restricted only to that extent. The learned counsel for the petitioner submits that insofar as other Sections are concerned, those are non-cognizable. Therefore, both the Courts below have committed a grave error in not considering the scope, ambit and ingredients of Section 294, and therefore, both the orders are unsustainable. Hence, the following order:-

ORDER

- (i) The Criminal Writ Petition is hereby allowed.
- (ii) The order dated 20/04/2022 passed below Exh.11 by learned Judicial Magistrate, First Class, Sakoli, in S.C.C. No. 366/2020 and order dated 04/02/2025 passed by District & Sessions Judge, Bhandara, in

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Criminal Revision No.38/2022, are hereby quashed and set aside, to the extent in not discharging the petitioner from the charge punishable under Section 294 of the Indian Penal Code only.

(iii) The petitioner is discharged for the offence punishable under Section 294 of the Indian Penal Code only.

(iv) Rule is made absolute in above terms.

[**M. M. NERLIKAR, J**]