

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 6th OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 2956 of 2024

BETWEEN:-

**RAHUL S/O SHRI MAHENDRA NATH, AGED
ABOUT 30 YEARS, OCCUPATION: BUSINESSMAN
R/O TEEN BATTI CHOURAHA MONEY
RESIDENCY ADVANCE COLONY UJJAIN
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SHYAM DHAR SHUKLA, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
MAHAKAL DISTRICT UJJAIN (MADHYA
PRADESH)**

.....RESPONDENTS

(BY MS. HARSHLATA SONI, G.A./P.L.)

*This application coming on for admission this day, the court passed
the following:*

ORDER

1] This petition has been filed by the petitioner under Section 482 of Cr.P.C. against the order dated 05/02/2022, whereby charges have been framed against the petitioner under Section 3 of Prevention of Damage to Public Property Act, 1984 (hereinafter referred to as the

“Act of 1984’ and Section 3 M.P. Sampatti Virupan Nivaran Adhiniyam, 1994 (hereinafter referred to as ‘the Act of 1994’) registered at Police Station Mahakan, District Ujjain (M.P.).

2] In brief, the facts of the case are that the petitioner is running a coaching class, and in the night of 13/09/2018 at around 8:00 O’clock, he was found pasting a pamphlet of his coaching Kautilya Academy on the wall of the Cabin (Chouki) of police station Mahakal and thus, the FIR has been registered against the petitioner and the aforesaid charges have been framed after the charge sheet was filed.

3] Learned counsel for the petitioner has submitted that he is not disputing that the charge under Section 3 of the Act of 1994 is indeed made out against the petitioner which provides for penalty for defacement of property, however, no case under Section 3 of the provisions of Damages to Public Property Act, 1984 is made out as there is no damage caused to the property. Counsel has also drawn the attention of this Court to the definition of ‘mischief’ as provided under Section 2-A of the Act of 1984 which provides that the mischief shall have the same meaning as in Section 425 of IPC. It is also submitted that in the IPC also, under Section 425, there is no reference of in any defacement of any property which may amount to destroying or deamination the value of the property. Thus, it is submitted that the charge so far as it relates to Section 3 of the Act of 1984 be quashed. Learned counsel for the petitioner has also submitted that there is no *Nuksani Panchnama* (loss memo) prepared

in the present case and thus, the petition is liable to be allowed. In support of his submissions, counsel has also relied upon the decision rendered by the High Court of Kerala at Ernakulam in *CRL.MC No.1895 of 2023 in the case of Rohit Krishna vs. State of Kerala and another*, and another decision of High Court of Karnataka in *Criminal Petition No.9809 of 2022 in the case of Narayana Gowda J S and another vs. State of Karnataka and another* wherein, in similar circumstances, both the High Courts have quashed the charges.

4] Learned counsel for the respondents/State, on the other hand has opposed the prayer and is it submitted that no case for interference is made out.

5] Heard learned counsel for the parties and perused the record.

6] So far as the offence under Section 3 of the Act of 1984 is concerned, the definition of mischief under the Act of 1984 provides that it would be as provided under Section 425 of the IPC. S.425 reads as under:-

“25. Mischief:- Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that

person and others jointly.”

7] Section 3 of the Prevention of Damages to Public Property Act, 1984 reads as under:-

“3. Mischief causing damage to public property. –(1)Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.”

8] So far as the decision relied upon by the counsel for the petitioner in the case of *Rohit Krishna* (supra) to is concerned, the Kerala High Court has quashed the charges on the ground that the loss memo states that a loss of Rs.63/- only has occasioned while removing the poster, and has also went on to hold that only because of loss of Rs.63/- to the public property, a court of law will be wasting its judicial time to try these types of trivial cases which is not warranted. This court is of the considered opinion that the said judgement can only be cited as an authority on the extent of inherent powers which can be exercised by the High Court, but not for interpreting s.3 of the Act of 1984. With due respect to the learned Judge of the Kerala High Court, this Court does not agree with the aforesaid preposition of law as this Court is of the considered opinion that the legality of a criminal charge must be tested on the touchstone of the penal provisions vis-à-vis the material available on record, otherwise it would lead to anomalous situation.

9] In the case of *Narayana Gowda JS* (supra) also, the Karnataka High Court has quashed the charge sheet on the ground that the

allegation against the petitioners were that they telephonically instructed some other accused persons to lay the posters. Thus, the case of the aforesaid accused is distinguishable on facts.

10] On due consideration of submissions and on perusal of the case diary as also the record, it is apparent that it is not denied that the petitioner was found to be pasting the pamphlet of his coaching class on the police Cabin (chouki) on 13/09/2018. It is also found that although pamphlet flag sheet? on which the sign of the petitioner's coaching class Kautilya Academy is also displayed, however, in the entire charge sheet, there is no document to demonstrate that any damage has been caused to any property of the police station. This Court is also of the considered opinion that any intention or knowledge can be attributed to any person who is affixing a pamphlet of his coaching class on any wall of a public property (a police cabin in the present case), that he is likely to cause, wrongful loss or damage to any person by injuring the said property or destroying or diminishing its value or utility. The absence of any loss memo (Nuksani Panchnama) also substantiates this reasoning. Although, this court hasten to add that any deliberate act of smearing or defacing of any public property may entail the charge u/s.425 of IPC, as it all depends upon the facts and circumstances of the case.

11] In such circumstances, this Court is of the considered opinion that the offence under Section 3 of the Act of 1984 would not be made out against the petitioner.

12] Accordingly, M.Cr.C. is *partly allowed* and the charge so far as it relates to Section 3 of the Prevention of Damages to Public Property Act, 1984 filed against the petitioner is hereby quashed, however, so far as the other offence under Section 3 of M.P. Sampatti Virupan Nivaran Adhiniyam, 1994 is concerned, the trial Court may proceed further in accordance with law.

Petition stands *partly allowed*.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

krjoshi