

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.333 OF 2016

Shaikh Shafiq Shaikh Farukh
Age: 36 Yrs., occu. Business,
R/o Raj Mohalla, Sailu,
Tq. Sailu, Dist. Parbhani.

- APPLICANT

VERSUS

1) The State of Maharashtra
Through the Investigating Officer,
Sailu Police Station, Sailu,
District Osmanabad.

2) Shaikh Rahimoddin Shaikh Issaq
Age: 52 Yrs., occu. Business,
R/o Suraj Mohalla, Sailu,
Tq. Sailu, Dist. Parbhani.

- RESPONDENTS

Mr.Manish P.Tripathi, Advocate for Applicant;
Mr.DR Kale,APP for State.
Mr.AM Salok, Adv. for Respondent No.2.

CORAM : **R.M.BORDE &**
 P.R.BORA,JJ.

DATE : **27th April, 2016.**

ORAL JUDGMENT (PER:- R.M.BORDE,J.)

1) Heard. Rule. Rule made returnable forthwith
with the consent of the learned counsel appearing for
the parties.

2) The applicant is praying for quashment of

F.I.R. lodged at police Station, Sailu, District Parbhani on 30.12.2014 under Sections 324, 323, 504, 506 read with Section 34 of Indian Penal Code. It is alleged that on the given date and time, the accused came to him and beaten the complainant with fists and blow. On the basis of the complaint, initially, an entry in respect of commission of non-cognizable offence was taken by the police bearing Entry No.31/2015 on 13.11.2015 at 19.55 hrs. However, the police appears to have recorded the FIR adding Section 324 of IPC.

3) On perusal of the FIR as well as upon consideration of the statements of the witnesses, ingredients of Section 324 of IPC are not attracted. Neither the complainant nor any of the witnesses has alleged to have used a sharp weapon or even a stick while committing the alleged crime. The provisions of section 324 of IPC are not at all attracted in this matter. The police authorities were justified in initially taking the entry in respect of non-cognizable offence. However, it appears that in order to escape from the mandate of securing permission from the Court to investigate the non-

cognizable offence, Section 324 of IPC appears to have been added. The action of the police, prima facie, appears to be malafide.

4) In the facts of the case, the registration of the alleged crime against the applicant for commission of the non-cognizable offence is not at all warranted. The FIR registered on 30.12.2015 and initiation of the criminal proceedings pursuant thereto, are quashed and set aside.

5) As has been recorded above, the Police have registered the non-cognizable case against the accused, it would be open for the complainant to adopt appropriate course in accordance with the provisions of law.

6) Rule is made absolute in above terms. No order as to costs.

sd/-
(P.R.BORA)
JUDGE

sd/-
(R.M.BORDE)
JUDGE

bdv/