

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 210 OF 2005

1. Mirza Farooq Baig s/o
Mirza Abdulla Baig,
age 35 years, Occ. Business,
R/o Zenda Chowk, Majalgaon,
District Beed.

2. Mirza Taufiq Baig s/o
Abdulla Baig, age 30 years,
Occupation and R/o as above.

3. Abdul Wahed s/o Abdul Deshmukh,
Age 45 years, Occ. and R/o as above.

4. Sk. Allauddin Shaikh Mohammad
Isaq, Age 42 years, Occ. Service,
R/o Waghora, Tq. Majalgaon,
District Beed.

..Petitioners

Versus

The State of Maharashtra
Through the P.S.O.
Majalgaon Police Station,
Tq. Majalgaon, Dist. Beed.

..Respondent

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Advocate for Petitioner : Shri S.P.Katneshwarkar
APP for Respondents: Shri Bhagat N.T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 16, 2016

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ORAL JUDGMENT :-

1. The petitioners by this petition have put forth prayer clauses (A)
and (B) as under:-

“(A) By issuing a Writ of Certiorari or any other appropriate Writ, Order or directions in the like nature, the impugned order 11.7.2000 passed below Exhibit 41 in RCC No.135 of 1995 by the Judicial Magistrate, First Class, Majalgaon and confirmed by the Additional Sessions Judge, Majalgaon, in Criminal Revision Petition No.8 of 2004 dated 3.2.2005, may kindly be quashed and set aside and the application of the petitioners for discharge may kindly be allowed and for that purpose issue necessary orders.

“(B) Pending hearing and final disposal of this Criminal Writ petition in this Honourable High Court, the further proceedings in RCC No.135 of 1995 pending before the Judicial Magistrate, First Class, Majalgaon, may kindly be stayed.”

2. By order dated 4.7.2006, this Court admitted this petition and granted interim relief in terms of prayer clause “B”.

3. The petitioners submit that a complaint was lodged against the petitioners on 4.5.1995, wherein, it was specifically stated by the complainant Salim Shafiqoddin that on 4.5.1995 at about 1900 Hours, he was standing in front of his house, when his relatives, namely, Farooq Baig Abdulla, Shafiq Baig Abdulla Baig, Abdul Wahed Deshmukh and Shaikh Allauddin abused him and beat him. At that juncture, his mother Razima Begum and sisters Nafisa Begum and Reshma Begum, tried to rescue the complainant and they were also beaten up.

4. On the above said complaint, an investigation was initiated and a

report dated 21.6.1995 was submitted by the Police Sub Inspector Majalgaon to the Executive Magistrate, Tahsil Office, Majalgaon stating therein that minor fights in between the two groups of people, who are related, has been frequently occurring and the accused could be directed to execute a good conduct bond in order to maintain peace and harmony under Section 116(3) of the Code of Criminal Procedure. By order dated 26.6.1995, the Executive Magistrate, Majalgaon directed that the accused be released on executing a bond of Rs.2,000/-

5. The petitioner submits that on 17.6.1995, the accused submitted a supplementary statement before the Police Station Majalgaon and narrated a completely different story. In his complaint dated 4.5.1995, he had stated that he was standing in front of his house and the four petitioners beat him up and beat his mother and sisters. In the supplementary statement, he has totally discarded the earlier story and stated that he was working in his kirana shop on 4.5.1995, when a small boy, whose identity is not revealed, came running and told him that loud voices and shouting are being heard from his residence. He, therefore, started towards his residence and at some distance away from his residence, these petitioners beat him up. He somehow rescued himself and went to his residence and found that his mother and two sisters were crying. They told the complainant that the petitioners had climbed over the rear wall of the house and had entered their home and had beaten them.

6. Shri Katneshwarkar submits that based on the supplementary statement, a new offense was registered against the petitioners and a charge sheet was filed in Criminal Case No.135 of 1995.

7. In the light of the above, the petitioners moved the learned Magistrate for discharge. By the impugned order, dated 11.7.2000, the application Exhibit 41 seeking discharge was rejected and the charge against the petitioners was directed to be framed under Sections 462, 324, 504, 341, 323 read with Section 34 of the Indian Penal Code.

8. He further submits that owing to the rejection of Exhibit 41, a Criminal Revision Petition No. 8 of 2004 was filed under Section 397 of the Cr.P.C. By the impugned judgment, dated 3.2.2005, the learned Additional Sessions Judge dismissed the revision petition.

9. Shri Katneshwarkar has put forth two grounds. Firstly that, a completely new story has been narrated in the supplementary statement, which was recorded after one month and thirteen days post the first complaint. If the story narrated in the supplementary statement is considered, it would indicate that the first complaint has been totally watered down, except that the names of the petitioners have been maintained in the supplementary statement and three ladies have been added to the list of accused.

10. He, therefore, submits that narration of a complete changed alleged event said to have been occurred on 4.5.1995 in comparison to the first complaint, is fatal and would indicate that the complainant desires that the accused should be charged with offenses and should suffer prosecution. A supplementary statement could possibly be accepted for further clarifying the statement recorded earlier, but in no case, can a supplementary statement be entertained when it gives a complete twist to the alleged act.

11. The second ground put forth by him is that this Court has considered the application of the other three persons, who were added to the list of accused persons by the complainant in the supplementary charge and by order dated 23.7.1998, passed by this Court in Criminal Application No.1107 of 1998, this Court has concluded that the supplementary statement is an after thought. Those petitioners were, therefore, discharged from the proceedings. He further adds that this Court has noted that the petitioners, on the basis of the initial complaint, had executed a good behaviour bond under Section 107 of the Cr.P.C.

12. The learned APP appearing on behalf of the State has supported the impugned orders. He submits that the trial Court as well as the revisional Court have rightly considered that after the evidence is

brought on record by the prosecution, the offense could be proved against the accused. He, therefore, submits that the application for discharge has been rightly rejected and no interference is called for.

13. I have considered the submissions of the learned Advocates and have considered the record available.

14. It is settled law that unless the impugned judgment is perverse and erroneous, no interference is called for in revisional jurisdiction.

15. Upon considering the material before me, I find that there is no similarity in the complaint filed by the complainant on 4.5.1995 and the one filed on 17.6.1995. It could be appreciated if the supplementary statement was aimed at clarifying some events which may have occurred and which were inadvertently left out. In the instant case, the event is stated to have occurred on 4.5.1995.

16. The story narrated in the first complaint is totally different than the story narrated in the supplementary statement. As noted above, the first complaint narrates a story of the complainant standing in front of his house and having got beaten up at the hands of the petitioners, who then assaulted his mother and two sisters, who came out of the house to rescue the complainant. In the second complaint, the complainant is said to be working in his Kirana Shop and an unknown small boy

informed him that he heard loud voices from his house. The complainant, therefore, travelled to his house, but before he could reach his home, he was assaulted by the petitioners. After reaching his home, he was told that they had entered his house by climbing the rear wall and had beaten up his mother and sisters.

17. Considering the above and on noting that this Court by its order dated 23.7.1998 has discharged the other accused persons on the ground that the supplementary statement is an after thought and an improbable story has been narrated, this petition succeeds

18. In the light of the above, the impugned orders dated 11.7.2000 and 3.2.2005 are quashed and set aside.

19. This petition is therefore allowed in terms of prayer clause (A) and Rule is made absolute.

(RAVINDRA V. GHUGE, J.)

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