

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

CRIMINAL WRIT PETITION NO. 525 OF 2007

1. Gopinath Shankar Dehade,
Age: 48 years, Occ: Service
2. Snehlata Gopinath Dehade,
Age: 42 years, Occu: Housewife
3. Sheetal Gopinath Dehade,
Age: 21 years, Occ: Education,

Respondent No. 1 to 3 R/o. N-42,
CC-1/5/5, Trimurti Chowk, CIDCO,
Taluka Nashik, Dist. Nashik

4. Nirmala Milind Jadhav,
Age: 36 years, Occ: Housewife
5. Milind Jadhav,
Age: 42 years, Occ: Service,

Respondent No. 4 & 5 R/o.
Samta Nagar, Takli Road,
Nashik

6. Sunil Dinkar Jadhav,
Age: 36 years, Occ: Service,
7. Kaveri Sunil Jadhav,
Age: 25 years, Occ: Housewife,

Respo. No. 6 & 7 R/o. Matrukrupa
Building, Pragati Colony, Upnagar,
Nashik 06.

8. Sagar Mukund Ambore,
Age: 29 years, Occ: Business,
R/o. Bagul Nagar, Vihitgaon, Nashik
road, Tal. & Dist. Nashik 422 101

9. Dada Naju Ahire,
Age: 45 years, Occ: Service,
R/o. N 53/AH 1/18/1, Rajendra Nagar,
Behind Merchant Bank, CIDCO-6,
Taluka & Dist. Nashik. ...Petitioners...

VERSUS

1. Balasaheb Shankar Gangurde,
Age: 41 years, Occ: Farmer,
R/o. Wahegaon, (Bharwas Phata)
Tq. Wahegaon, Taluka Niphad,
Dist. Nashik
2. State of Maharashtra. ..Respondents..

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Advocate for Petitioners : Mr. V S Janephalkar.
Advocate for Respondent 1 : Mrs. M A Kulkarni
APP for Respondent 2 : Mr. A R Kale

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CORAM : V.K. JADHAV, J.
Dated : September 23, 2016
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ORAL JUDGMENT :-

1. The petitioner-original accused in Criminal Case No.715/2005 seeks quashment of the proceedings of said case pending before the Judicial Magistrate, First Class, Kopergaon.
2. The learned counsel for the petitioner submits that respondent no.1 had filed private complaint bearing Summary Criminal Case No.715/2005 before the

Judicial Magistrate First Class, Kopergaon and accordingly, the learned Magistrate has issued process against the present petitioners and one deceased Dinkar Jadhav for offences punishable under section 323, 504, 506 read with 34 of the Indian Penal Code. Learned counsel submits that, said private complaint is a false complaint even filed against one deceased person namely Dinkar Jadhav who arrayed as an accused no.8 in the complaint. Said Dinkar Jadhav was serving in judiciary as a Judge and he died on 10.12.1998. In the complaint, incident shown to have been taken place on 15.5.2005 and said Dinkar Jadhav who died on 10.12.1998 shown to have been participated in the incident and specific role was ascribed to him that he beaten the complainant with the help of fist and kick blows.

3. Learned counsel further submits that, furthermore, one Vijay Gatalu Gaikwad who is related to respondent no.1 Balasaheb Gangurde has also filed a private complaint before the Magistrate at Kopergaon bearing Criminal Case no.623/2005 against the present

applicants and also said deceased Dinkar Jadhav with the same allegations. Respondent no.1 has filed complaint before the Magistrate alleging therein that present applicants and said deceased Dinkar Jadhav in furtherance of their common intention committed the offence punishable under section 323, 504, 506 read with 34 of Indian penal Code and place of incident is S.T. Stand Kopargaon. The date and place of incident is 1.5.2005 S.T. stand Kopargaon. In the complaint filed by said Vijay Gatlu Gaikwad same date and same time is shown, however, the place of incident is shown as Pohegaon Bus stand. In the complaint filed by present respondent no.1, said Vijay Gatlu Gaikwad is shown as witness whereas in the complaint filed by Vijay Gatalu Gaikwad present respondent no.1 Balasaheb is shown as witness. Learned counsel submits that, the learned Judge of the Trial Court has not bothered to direct the investigation as provided under section 202 of the Code of Criminal Procedure and mechanically passed order of issuance of process. Learned counsel submits that, the complaint filed by respondent no.1 Balasaheb is utterly false and the same is thus liable to be quashed.

4. I have also heard the learned counsel for respondent no.1 and the learned APP for the respondent no.2 State.

5. It appears from the complaint filed by respondent no.1 Balasaheb that, alleged incident had taken place on 1.5.2005 on Sunday at about 02.00 to 02.30 p.m. at S.T Stand Kopargaon. It has alleged in the complaint that on that day, complainant had been to Kolapewadi Tq. Kopargaon for attending the marriage ceremony and all the applicant accused persons also attended said marriage. It further appears from the allegations that a specific role is ascribed to original accused no.8 Dinkar Jadhav, who admittedly died in the year 1998. His name afterwards deleted from the array of the accused persons, however, respondent no.1-original complainant has not bothered to delete the allegations made against the deceased accused no.8. Furthermore, death certificate of said Dinkar Jadhav is produced on record and as per the contents of said death certificate, deceased Dinkar Jadhav died on 10.12.1998. It further appears that, Court has issued process against all

accused including deceased Dinkar Jadhav and accordingly summons has been issued to said deceased accused Dinkar Jadhav.

6. On perusal of complaint filed by said Vijay Gatlu Gaikwad, it appears that incident shown to have been occurred on 1.5.2005 on Sunday between 02.00 to 02.30 p.m. and place of incident is shown as S.T. Stand Pohegaon. It has alleged in the complaint that, on that day, the complainant Vijay Gatalu Gaikwad had been to Pohegaon to attend one programme of his relative and at that time all the applicant-accused persons including deceased Dinkar Jadhav had also come there. In the similar manner a particular roe is also ascribed to deceased Dinkar Jadhav.

7. I do not think that it is possible for the applicants-accused persons to be remain at two different places on the same date and time when admittedly, there is a considerable distance between village Pohegaon and Kolapewadi. Furthermore, respondent no.1-original complainant Balasaheb was beaten at Kolapewadi by

the applicants-accused in presence of Vijay Gatalu Gaikwad and as per the complaint of Vijay Gatalu Gaikwad he was beaten by the present applicants and deceased Dinar Jadhav at village Pohegaon Tq. Kopargaon on the same date and time. In that event, no other inference could be drawn but to say that false complaints came to be filed against the present applicants.

8. In view of the above, following order is passed.

ORDER

- I. Criminal Writ Petition is allowed in terms of prayer Clause "A".
- II. Writ Petition accordingly disposed off. Rule is accordingly made absolute in above terms.

sd/-

(V.K. JADHAV, J.)

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aaa/-