IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5755 OF 2016

1) Sunil s/o Mahadu Shinde,
Age-25 years, Occu:Student,

2) Hanumant s/o Mahadu Shinde,
Age-27 years, Occu:Labour,

3) Laxmibai w/o Mahadu Shinde,
Age-50 years, Occu:Household,

4) Jyoti w/o Hanumant Shinde,
Age-22 years,Occu:Household,

All R/o-Mochi Galli, Ambejogai,
Tq-Ambejogai, Dist-Beed.

...APPLICANTS

VERSUS

1) The State of Maharashtra,

2) Gajanan s/o Dharmaraj Kalyani,
Age-29 years, Occu:Nil,
R/o-Mochi Galli, Ambejogai,
Tq-Ambejogai, Dist-Beed.

...RESPONDENTS

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Mr.Kailas A. Kadam Advocate for Applicants.
Mr.B.V. Virdhe, A.P.P. for Respondent No.1.
Mr.Ratan Laxman Adhe Advocate h/f. Mr. A.A. Nimbalkar Advocate for Respondent No.2.

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CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.

DATE : 30TH NOVEMBER, 2016

ORDER :

1. The learned counsel appearing for the Applicants, on instructions, seeks permission to withdraw this Application for Applicant Nos.1 and 2. Therefore, this Application is dismissed as withdrawn so far as Applicant Nos. 1 and 2 are concerned.

2. The learned counsel appearing for the Applicants submits that there are general allegations against Applicant Nos.3 and 4. There is no any specific overt act attributed to Applicant Nos.3 and 4. In fact, both the Applicants were not present at the place of incident. He further submitted that Applicant No.4 - Jyoti w/o Hanumant Shinde has a small child and she has to look after her and therefore there was no question of her remaining present at the spot

of incident. It is submitted that even if the allegations in the F.I.R. are taken on its face value and read in its entirety, the ingredients of the alleged offences are not attracted so far as Applicant No.3 - Laxmibai w/o Mahadu Shinde and Applicant No.4 - Jyoti w/o Hanumant Shinde and therefore, continuation of further investigation on the basis of general allegations without attributing any overt act, would be abuse of process of law and the F.I.R. deserves to be quashed.

3. On the other hand, learned A.P.P. appearing for State as well as learned counsel appearing for Respondent No.2 submit that allegations in the F.I.R. will have to be taken as they appear and will have to be tested during the trial. It is submitted that there are specific allegations against Applicant Nos.3 and 4 that they instigated Applicant Nos.1 and 2 in commission of alleged offence and therefore,

Application for quashing the F.I.R. may be rejected.

4. We have heard the learned counsel appearing for the Applicants and learned counsel appearing for Respondent No.2 and the learned A.P.P. appearing for the State at length. We have perused the allegations in the F.I.R. and also other annexures placed on record and also affidavit in reply filed by Respondent No.2.

5. So far as Applicant No.3 - Laxmibai w/o Mahadu Shinde and Applicant No.4 - Jyoti w/o Hanumant Shinde are concerned, if the allegations against them in the entire F.I.R. are perused, those are as under:-

> "*त्यावेळेस तिथे आरोपी क. ३ व ४ आल्या व त्यांनी भाडखाऊला सोडू नका चांगले झोडपून काढा अशी चिथावणी आरोपी क. १ व २ यांना देवू लागल्या.*"

6. There are no allegations against Applicant Nos.3 and 4 which would attract the provisions of Section 3(1)(x) and 3(1)(xv) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Even to attract the ingredients of Sections 323, 324, 326 read with 34 of the Indian Penal Code, there are no specific overt acts attributed to Applicant Nos.3 and 4. So far as ingredients of Section 441 of the Indian Penal Code are concerned, there are no specific allegations in the F.I.R. that Applicant Nos.3 and 4 with intent to commit an offence or to intimidate, or insult or annoy the informant, entered in his house.

7. Therefore, keeping in view the parameters laid down by the Supreme Court in the case of ***State of Haryana V/s Bhajanlal*" {*AIR 1992 SC 604,*** we are of the considered view that, this Application for quashing the F.I.R. so far as Applicant No.3 - Laxmibai w/o Mahadu Shinde and

Applicant No.4 - Jyoti w/o Hanumant Shinde are concerned, deserves to be allowed. Hence we pass following order:

O R D E R

(I) The Criminal Application is partly allowed.

(II) Application stands dismissed as withdrawn so far as Applicant No.1 - Sunil s/o Mahadu Shinde and Applicant No.2 - Hanumant s/o Mahadu Shinde, are concerned.

(III) So far as Applicant No.3 - Laxmibai w/o Mahadu Shinde and Applicant No.4 - Jyoti w/o Hanumant Shinde are concerned, the F.I.R. bearing Crime No.85 of 2016 registered with City Police Station at Ambejogai, Tq-Ambejogai, Dist-Beed for offence punishable under Sections 323, 324, 326, 441 read with 34 of the Indian Penal Code and Sections 3(1)(x) and 3(1)(xv) of the the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act, stands quashed and set aside.

(IV) We make it clear that so far Applicant Nos.1 and 2 are concerned, the Investigating Officer to proceed further with the investigation.

(V) The Application stands disposed of, accordingly.

[K.K. SONAWANE, J.] **[S.S. SHINDE, J.]**

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