

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

902 CRIMINAL APPLICATION NO. 5766 OF 2016

**CHAYA MANIK JADHAV
& ORS.**

VERSUS

THE STATE OF MAHARASHTRA

.....

Mr. V.D.Hon, Senior Counsel i/b

Mr. A.V.Hon, Advocate for Applicants.

Mr. S.P.Sonpawle, A.P.P. for Resp. – State.

.....

WITH

902 CRIMINAL APPLICATION NO. 5800 OF 2016

**RAVINDRA SUKA SHIRSATH
& ANR.**

VERSUS

THE STATE OF MAHARASHTRA

.....

Mr. Joydeep Chatterji, Advocate for Applicants.

Mr. S.P.Sonpawle, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.

DATE : 21st, OCTOBER 2016

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ORAL ORDER :

1. Both these applications are being decided by this common order as they are arising out of cross F.I.Rs. filed by both parties against each other.

2. The applicants in Criminal Application No. 5766 of 2016 are accused in Crime No. 235/2016 registered at Dhule Taluka police station, Dhule, Dist. Dhule for the offences punishable U/ss 395,441 of the Indian Penal Code, u/s 4 (1) (r) (s) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short, 'S.C. & S.T. Act'] and u/s 7 (1) (iii) of the Protection of Civil Rights Act. This F.I.R. is lodged by applicant No. 2 Prashant Namdeo Wagh in Criminal Application No. 5800 of 2016.

3. The applicants in Criminal Application No. 5800 of 2016 are accused in Crime No. 234/2016 for the offences punishable U/ss 397,441 of the Indian Penal Code. F.I.R. of this crime is registered at Dhule Taluka police station, Dhule, Dist. Dhule at the instance of Yatin Jadhav, who is also one of the accused in Crime No. 235/2016 registered at the instance of Prashant Wagh. In both these Criminal Applications, the

applicants are seeking pre-arrest bail.

4. Heard Mr. V.D.Hon, learned Senior Counsel for applicants/accused in Criminal Application No. 5766 of 2016. He argued that perusal of the F.I.R. itself goes to show that *per se* false report is filed by Prashant Wagh against the applicants. This is result of concoction. The learned Senior Counsel further argued that applicants are relatives of co-accused Vishal Jadhav. Applicant No. 1 Chaya Manik Jadhav is aged lady, whereas applicant No. 2 Poonam Manik Jadhav is a mentally retired woman, who is even unable to move out of the house. Applicant No. 3 Sou. Komal @ Harshada Vishal Jadhav is not even resident of the village, where the incident allegedly took place. She is resident of village Kasa, Taluka Dahanu, District Palghar (Thane).

5. Mr. Joydeep Chatterji, learned counsel appearing for the applicants in Criminal Application No. 5800 of 2016 argued that the applicants are falsely implicated by informant Yatin Jadhav and there is cross F.I.R. at the instance of applicant No. 2 Prashant Wagh. The learned counsel further argued that the allegations regarding Section 397 of the

Indian Penal Code are improbable and the prosecuting party was harassing applicant No. 2, which is even reflected by subsequent report lodged by applicant No. 2 Prashant Wagh in respect of the incident which took place at about 9.30 p.m. on 16/08/2016.

6. Both the learned counsels appearing for the applicants pointed out that on the day of the incident, with the intervention of respectable persons from the village, it was decided to settle the matter, but subsequently on the next day both parties have lodged report against each other.

7. I have also heard the learned A.P.P. He opposed the application by contending that there are statements of several eye witnesses which show complicity of all the applicants in the crime in question.

8. I have carefully considered the rival submissions and also perused the record made available. Informant Prashant Wagh in Crime No. 235/2016 alleged that there was an attempt to erect compound on the land in the name of their mother by accused persons. When co-accused were assaulting

him, present applicants came on the spot and gave abuses in the caste name of him. Then he was robbed of his gold ring worth Rs. 5,000/- and cash amount of Rs. 5,000/-.

9. Informant Yatin Jadhav in Crime No. 234/2016 averred that he had undertaken work of erecting compound at the instance of Mahale brothers. When that work was going-on, present applicants and co-accused came on the spot and started assaulting him. Informant Yatin Jadhav averred that during that assault he was robbed of gold chain worth Rs. 10,000/- as well as cash amount of Rs. 3,500/-.

10. Perusal of both F.I.Rs. goes to show that informants therein have made the candid statements that on the day of the incident i.e. on 16/08/2016, with the intervention of respectable persons from the village, the matter was settled and it was decided not to lodge report. This fact, *prima facie*, shows that at least there was no robbery by both parties or if that was so, then there was settlement over that issue also. F.I.R. of both crimes were then lodged subsequently on the next day. In such facts situation, adding embellishment to the prosecution case by both parties is there

and castes abuses alleged by Prashant Wagh are to be viewed from that angle. He is allegedly the Government Contractor holding Diploma in Civil Engineering. If really there were abuses in the caste name, in every probability, he would not have settled the matter. In this view of the matter, no *prima facie* case for the offence under the provisions of S.C. & S.T. Act is reflected from the papers of investigation in Crime No. 235/2016. As such, Criminal Application No. 5766 of 2016 could validly be entertained.

11. Considering the fact that both parties are making some allegations against each other with a history that initially the matter was settled, I am of the opinion that custodial interrogation of the applicants in both Criminal Applications is not warranted, considering the nature of allegations against them as well as penal provisions invoked against them by the Investigating Officer. Hence, the following order.

(i) Both Criminal Applications are allowed.

(ii) Applicant No. 1 Chaya Manik Jadhav, applicant No. 2 Poonam Manik Jadhav and applicant No. 3 Sou. Komal @ Harshada Vishal Jadhav in criminal Application No. 5766 of

2016 in Crime No. 235/2016 registered at Dhule Taluka police station, Dhule, Dist. Dhule for the offences punishable U/ss 395,441 of the Indian Penal Code, u/s 4 (1) (r) (s) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and u/s 7 (1) (iii) of the Protection of Civil Rights Act and applicant No. 1 Ravindra Suka Shirsath and applicant No. 2 Prashant Namdeo Wagh in Criminal Application No. 5800 of 2016 in Crime No. 234/2016 for the offences punishable U/ss 397,441 of the Indian Penal Code, in the event of their arrest, be released on bail on executing P.R. Bond of Rs. 15,000/- [Rupees Fifteen Thousand] each and on furnishing surety in the like amount.

(iii) As a condition of this Order, the applicants shall not extend any threat, inducement or promise to the persons acquainted with the facts of the accusation so as to dissuade them from disclosing the same either to the police or the Court.

(iv) The applicants shall not tamper the evidence of the prosecution.

(v) The applicants in Criminal Application No. 5766 of 2016 shall attend the concerned police station on 05/11/2016 in between 11.00 a.m. and 1.00 p.m. and they should co-operate the Investigating Officer in the investigation of the crime in question.

(vi) The applicants in Criminal Application No. 5800 of 2016 shall attend the concerned police station on 12/11/2016 in between 11.00 a.m. and 1.00 p.m. and they should co-operate the Investigating Officer in the investigation of the crime in question.

(vii) The applicants in Criminal Application No. 5766 of 2016 and Criminal Application No. 5800 of 2016 should not indulge in commission of any crime in future.

[A.M.BADAR, J.]