

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO.1001 OF 2017
WITH**

**CRIMINAL APPLICATION NO.1758 OF 2017
IN
CRIMINAL APPLICATION NO.1001 OF 2017**

- 1) Naeem Khan s/o Rahim Khan Pathan,
Age-50 years, Occu:Business,
- 2) Ismail Khan s/o Rahim Khan Pathan,
Age-35 years, Occu:Business,
- 3) Shaikh Abdul Qadar s/o Maqsood,
Age-25 years, Occu:Business,
- 4) Shaikh Khalid s/o Shaikh Maqsood,
Age-20 years, Occu:Business,

All R/o-Narsi (Namdeo),
Tq. & Dist-Hingoli.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Station,
Narsi (Namdeo), Tq. & Dist-Hingoli,
- 2) Lateef Khan s/o Qadar Khan Pathan,
Age-27 years, Occu:Business,
R/o-Narsi (Namdeo),
Tq. & Dist-Hingoli.

...RESPONDENTS

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Mr.H.I. Pathan Advocate for Applicants.
Mr.K.D. Munde, A.P.P. for Respondent No.1.
None present for Respondent No.2.

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

DATE OF RESERVING ORDER : 28TH APRIL,2017.

DATE OF PRONOUNCING ORDER: 3RD MAY, 2017.

ORDER [PER S.S. SHINDE, J.]:

1. The Applicants have filed this Application praying therein to quash and set aside the First Information Report in Crime No.4 of 2017 registered with the Police Station Narsi (Namdeo), Tq. and Dist-Hingoli for the offence punishable under Section 307, 323, 324, 325, 504, 506 read with 34 of the Indian Penal Code.

2. Learned counsel for the Applicants submits that the present complaint is outcome of a false story created by the informant to implicate the present Applicants in a false case. It is submitted that contents of the First Information

Report reveals that the incident happened between 5.00 to 5.10 p.m. on the ground of shifting the shop of the informant at another place and it is alleged that Applicants assaulted the informant by means of iron rod. Learned counsel submits that, in fact on 5th January, 2017 at about 4.45 p.m. quarrel took place between the informant and Applicant Nos.3 and 4 at Namdeo Paati in front of Hotel of Mr. More on the ground of giving news in Newspaper. Police Naik Ravindra Varne along with Police Sub Inspector Sapkale, ASI Gangavne and police constable Kendre, Chavan and Amjad Shaikh reached on the spot and rescued the quarrel and registered FIR against the informant and Applicant Nos. 3 and 4. He submits that on this factual background, it appears that the said incident was continued up-to at least 30 minutes till the registration of Crime No.2 of 2017 which appears from the copy of FIR. Thus it is clear that, only to implicate the Applicants, false First Information is lodged.

3. Learned counsel further submitted that on considering the contents of the present First Information Report and the time of happening incident qua the incident and time in Crime No.2 of 2017, there is bleak chance of success of prosecution on the basis of prima facie evidence on record and therefore allowing to continue the proceeding of First Information Report in Crime No.4 of 2017 would be nothing but abuse of process of law. Considering the contents of the First Information Report in Crime No.2 of 2017 and Crime No.4 of 2017, it appears that the informant had deceived the police authority in registering false First Information Report against the Applicants and therefore the First Information Report in Crime No.4 of 2017 dated 11th January, 2017 deserves to be quashed and set aside.

4. Learned counsel, relying upon the averments in the Application, grounds taken therein, submits that the Application deserves to be allowed.

5. On the other hand, learned A.P.P. invites our attention to the allegations in the First Information Report and also the affidavit in reply filed on behalf of Respondent No.1 and submits that on 5th January, 2017 the information is received that Applicant Nos.3, 4 and Respondent No.2 were fighting at Narsee Namdev Phata. Therefore P.S.I. of Police Station Narsi Namdev along with other police staff, went to the spot and found that Applicant Nos.3, 4 and Respondent No.2 were fighting at public place. Therefore, the police officials intervened in the fight and stopped them from fighting. While stopping the fight, Ravindra Varne, Police Naik has also sustained simple injuries. After stopping the fight, Applicant Nos.3, 4 and Respondent No.2 were referred to Rural Hospital, Narsee Namdev. As Respondent No.2 had received serious injuries, he was referred to Civil Hospital, Hingoli and thereafter at Civil Hospital, Nanded. It is submitted that accordingly Police Naik Ravindra

Varne has filed complaint against Applicant Nos.3, 4 and Respondent No.2 under Section 160 of the Indian Penal Code bearing First Information Report No.2 of 2017.

6. Learned A.P.P. further submitted that, as Respondent No.2 was injured and referred to Civil Hospital, Nanded, therefore Nanded Police has taken statement of Respondent No.2 on 8th January, 2017 when he was undergoing treatment in Civil Hospital, Nanded. After receiving statement of Respondent No.2, First Information Report is registered against all the Applicants bearing First Information Report No.4 of 2017 under Section 307, 323, 324, 325, 504, 506 and 34 of the Indian Penal Code on 11th January, 2017. It is further submitted that during the course of investigation by the Investigating Officer it is revealed that Applicant Nos.1 to 4 attacked on Respondent No.2 and caused him injuries. Applicant Nos.1 and 2 fled away from the spot and afterwards the police officials reached to the spot.

Therefore, name of Applicant Nos.1 and 2 is not appearing in the First Information Report bearing No.2 of 2017 registered by Police Naik Ravindra Varne.

7. Learned A.P.P. further submits that in the statement of Respondent No.2 he has mentioned that quarrel took place at 17.00 hours. Therefore, to ascertain regarding truthfulness of time, the supplementary statement of Respondent No.2 is recorded, in which he has mentioned that the quarrel took place between 16.30 to 17.00 hours. Therefore, it appears that the offence mentioned in Crime No.2 of 2017 and Crime No.4 of 2017 are based on same incident which happened on 5th January, 2017 between 16.30 to 17.00 hours. Therefore, the learned A.P.P. submits that the Application may be rejected.

8. We have heard learned counsel appearing for the Applicants and learned A.P.P. appearing for the State at length. We have carefully perused

the allegations in the First Information Report and also the investigation papers made available by the learned A.P.P. Upon careful perusal of the allegations in the First Information Report, specific overt acts are attributed to each of the Applicants. It appears that as a result of assault and beating by the Applicants to Respondent No.2 - Lateef Khan s/o Qadar Khan Pathan, he suffered grievous injuries, as it is evident from the injury certificate which is collected during the course of investigation. There are more than four witnesses who have witnessed the incident, therefore, their evidence is in the nature of eye witnesses.

9. The contention of the learned counsel appearing for the Applicants that on the date of incident at the relevant time Applicants were in police custody and therefore allegations are false, deserves no consideration in view of Para 8 of the affidavit in reply filed on behalf of Respondent No.1. It is stated that quarrel took

place between 16.30 to 17.00 hours, however, while taking entry in the Station Diary there may be an error in mentioning of the time. In that view of the matter, since the investigation is in progress, we are not inclined to entertain this Application for quashing the First Information Report. Hence the Criminal Application No.1001 of 2017 stands rejected.

10. In view of disposal of Criminal Application No.1001 of 2017, the Criminal Application No.1758 of 2017 also stands disposed of.

. The observations made herein before are prima facie in nature and confined to the adjudication of the present Application only.

[K.K. SONAWANE, J.]

asb/APR17

[S.S. SHINDE, J.]