

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

CRIMINAL WRIT PETITION NO. 593 OF 2017

Sukhdeo S/o Kashinath Mundhe,
Age: 25 years, Occ.: Service,
R/o Lecture Colony, Gangakhed,
Tq. Gangakhed, District Parbhani.
At. Present – Dhulghat,
Tq. Dharani, Dist. Amaravati.

...PETITIONER

Versus

1] The State of Maharashtra
Through the Police Inspector,
Gangakhed Police Station,
Tq. Gangakhed, District Parbhani.

2] Charansingh S/o Vithalsingh Thakur,
Age: 48 years, Occ.: Business,
R/o Thakur Colony,
Tq. Gangakhed, District Parbhani.

... RESPONDENTS

Mr. Sandeep D. Munde, Advocate for the Petitioner.
Mr. S.P. Deshmukh, APP for Respondent no.1.
Mr. D.M. Shinde, Advocate for Respondent no.2.

**CORAM : S. S. SHINDE &
MANGESH S. PATIL, JJ.**

**RESERVED ON : 31.10.2017
PRONOUNCED ON : 10.11.2017**

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JUDGMENT: (*Per Mangesh S. Patil, J.*)

. Rule. Rule is made returnable forthwith. With the consent of the parties the matter is heard finally.

2. In this Writ Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure the petitioner is seeking quashment of F.I.R. No. 130 of 2008 registered with Gangakhed Police Station on 15.08.2008 for the offence punishable under Section 324, 323, 504, 506 r/w 34 of the Indian Penal Code. According to the petitioner, the impugned F.I.R. was lodged by one Charansingh Vithalsingh Thakur, alleging that the petitioner, his brother and parents assaulted and abused him. The petitioner had dealt a blow of stick on Charansingh's head. Since his brother was minor, his case was sent up to Juvenile Justice Board and the charge-sheet was filed in the Court of Judicial Magistrate First Class against him and his parents. However, an application was moved before the learned Magistrate on 13.10.2011 contending that since the present petitioner was juvenile when the offence was committed, he could not have been sent up for trial before the Court of Judicial Magistrate First Class and the charge-sheet ought to have been filed with the Juvenile Justice Board.

Accordingly, the learned Magistrate by his order dated 11.11.2011 directed the Investigating Officer to file charge-sheet as against the petitioner before the Juvenile Justice Board. According to the petitioner, subsequently his parents were tried by the learned Magistrate and by the judgment and order dated 05.07.2014 they have been acquitted. He has further contended that even his minor brother who was sent up with charge-sheet before the Juvenile Justice Board has not been let of by the board by stopping the case by invoking powers under Section 258 of the Code of Criminal Procedure. The petitioner has now been selected as Forest guard in the Forest Department and has to join the services, however, since the impugned F.I.R. is pending against him, he is not being able to join and it is causing great hardship to him. Hence, he has prayed to quash and set aside the impugned F.I.R. in view of the peculiar facts mentioned herein above.

3. We have heard the learned Advocate for the petitioner who has vehemently submitted that in the peculiar facts and circumstances, it would be sheer abuse of process, if the petitioner is made to face the trial and would cause hardship to him, since he has been offered the job. The learned Advocate also submitted that there has been enormous delay caused in filing charge-sheet against him in the Juvenile Justice

Board and taking into consideration the offence alleged against him, because of such delay, the Juvenile Justice Board will not be able to take cognizance in view of the provisions of Section 468 of the Code of Criminal Procedure. In support of his submission, he placed reliance on the order passed by the Division Bench of this Court in Criminal Application No. 1435 of 2016 on 05.05.2016 in the case of **Sudarshan s/o Shivaji Dhande V/s. The State of Maharashtra and Anr.**

4. According to the learned A.P.P., the petitioner was already charge-sheeted before the learned Judicial Magistrate First Class who had taken cognizance and it is only thereafter that by the order the learned Magistrate directed to file separate charge-sheet against the petitioner before the Juvenile Justice Board. Therefore, according to the learned A.P.P. the bar of Section 468 Cr.P.C. will not come into picture.

5. Since the learned Advocate for the petitioner has raised legal issue we deem it necessary to deal with it at the first instance. Admittedly, by the impugned F.I.R. the offence punishable under Section 324, 323, 504, 506 have been charged. The minimum punishment would be for seven years for causing criminal intimidation by giving threat to cause death or grievous hurt for the offence punishable under

Part-II Section 506. The offence punishable under Section 324 of the Indian Penal Code is only punishable up to three years. Therefore, we can proceed on the ground that the minimum punishment which can be meted out to the petitioner would be of seven years for the offence punishable on the latter part of Section 506 of Cr.P.C.

6. Section 468 of the Code of Criminal Procedure which provides for bar for taking cognizance after lapse of the period of limitation reads as under:

“468. Bar to taking cognizance after lapse of the period of limitation-

- (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.
- (2) The period of limitation shall be-
 - (a) six months, if the offence is punishable with fine only;
 - (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
 - (c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.
- (3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

7. As is observed above, by virtue of Section 3 of Section 468

the period of limitation in respect of the offence which can be tried together shall be determined with reference to the offence punishable with more serious punishment. Therefore, since the offence punishable under latter part of the Section 506 of the Indian Penal Code is also being alleged, which is punishable up to seven years of imprisonment, the period of limitation will have to be calculated in accordance with such punishment. If that be so, as is clear from Sub-Section 2 of Section 468 of the Code of Criminal Procedure Code, the bar for taking cognizance is applicable only for the offences for which the punishment does not exceed three years. In other words, such bar for taking cognizance is applicable in respect of only such offence, wherein, the maximum punishment that can be imposed is imprisonment for a term of three years. In view of such legal position, since the impugned F.I.R. also contains the allegation containing the offence punishable under second part of Section 506 which is punishable for seven years imprisonment, the bar for taking cognizance contained under Section 468 of the Code of Criminal Procedure is not applicable. Reliance placed by the learned Advocate for the petitioner in the case of **Sudarshan Dhande** (supra) is clearly misplaced, since in that matter the offence was punishable under Section 135 r/w Section 37 of Maharashtra Police

Act, 1951 which is punishable with imprisonment of one month and fine. Therefore, this submission of the learned Advocate for the petitioner is not tenable.

8. Now turning to the other aspects of the matter, as is observed above, admittedly, the parents of the petitioner have already been acquitted long back after full fledged trial. The petitioner's brother who was juvenile with conflict in law and in respect of whom charge-sheet was sent up to Juvenile Justice Board has also been set free since his case has been stopped by invoking powers under Section 258 of the Code of Criminal Procedure Code. However, the basic allegations in the complaint is about the petitioner having given blow of stick on the head of the complainant / informant. If this is so, merely because the parents have been acquitted and the case as against the brother has been stopped under Section 258 of the Code of Criminal Procedure Code, merely on the ground of sympathy the impugned F.I.R. cannot be quashed. The petitioner will have to face the prosecution may be after lapse of a considerable time. We find no justifiable reason to obstruct such course of law being followed. We, therefore, find no substance in the petition which is liable to be dismissed.

9. However at the same time we cannot lose sight of the fact that there has been an enormous and blatant delay in filing the charge-sheet against the petitioner in accordance with the order passed by the learned Magistrate in the year 2011. We therefore deem it fit to direct the concerned Superintendent of Police to cause an enquiry to be made and to punish the erring officials. He may also personally look into the issue and cause the charge-sheet to be filed within a period of three weeks from today.

10. In the result, the petition fails and is dismissed. The Rule is discharged.

[MANGESH S. PATIL, J.]

[S. S. SHINDE , J.]