

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.974 OF 2016

- 1) Aditya s/o Sharad Deshmukh,
Age-32 years, Occu:Legal Practitioner,
R/o-Shekapur, Tq-Udgir,
Dist-Latur,
- 2) Pramod s/o Prakash Rajurkar (Joshi),
Age-32 years, Occu:Service,
- 3) Pradeep s/o Prakash Joshi (Rajurkar),
Age-35 years, Occu:Business,

Both: R/o-Sai Nagar, Bidar Road,
Udgir, Tq-Udgir, Dist-Latur.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Udgir Gramin Police Station,
Tq-Udgir, Dist-Latur,
- 2) Abhijeet s/o Malhari Somwanshi,
Age-43 years, Occu: Agri.,
R/o-Nideban, Tq-Udgir,
Dist-Latur.

...RESPONDENTS

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Mr.Gokul M. Shingare Advocate for Petitioners.
Mr.S.G. Karlekar, A.P.P. for Respondent No.1.
Mr.A.K. Gawali Advocate for Respondent
No.2 (Appointed).

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WITH

CRIMINAL APPLICATION NO.2745 OF 2016

Vikram s/o Nilkhant Sankaye,
Age-36 years, Occu:Advocate,
R/o-Shelhal Road, Udgir,
Tq-Udgir, Dist-Latur.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through the Police Station Officer,
Police Station, Udgir(Rural),
Tq-Udgir, Dist-Latur,
- 2) Abhijeet s/o Malhari Somwanshi,
Age-Major, Occu: Agri.,
R/o-Nideban, Tq-Udgir,
Dist-Latur.

...RESPONDENTS

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Mr.M.S. Deshmukh Advocate holding for Mr. U.L.
Momale Advocate for Applicant.
Mr.S.G. Karlekar, A.P.P. for Respondent No.1.
Mr.A.K. Gawali Advocate for Respondent
No.2 (Appointed).

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WITH

CRIMINAL APPLICATION NO.4895 OF 2016

- 1) Gangadhar Manmath Swami,
Age-47 years,
Occu:Agriculture & Tax Consultant
R/o-Shivteerth, Ketaki Sangmeshwar
Colony, Degloor Road, Udgir,
Tq-Udgir, Dist-Latur,

- 2) Sou. Minakshi Gangadhar Swami,
Age-38 years, Occu:Agriculture & Household,
R/o-Shivteerth, Ketaki Sangmeshwar
Colony, Degloor Road, Udgir,
Tq-Udgir, Dist-Latur.

...APPLICANTS**VERSUS**

- 1) The State of Maharashtra,
Through Udgir(Rural) Police Station,
Tq-Udgir, Dist-Latur,
- 2) Abhijeet s/o Malhari Somwanshi,
Age-Major, Occu: Agri.,
R/o-Nideban, Tq-Udgir,
Dist-Latur.

...RESPONDENTS

...

Mr.R.P. Adgaonkar Advocate for Applicants.
Mr.S.G. Karlekar, A.P.P. for Respondent No.1.
Mr.A.K. Gawali Advocate for Respondent
No.2 (Appointed).

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

DATE OF RESERVING ORDER : 24TH APRIL,2017.

DATE OF PRONOUNCING ORDER : 4TH MAY, 2017.

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

1. All these Petition/ Applications are

filed praying therein to quash and set aside the First Information Report No.135 of 2016 registered on 8th April, 2016, at Udgir(Rural) Police Station for the offence punishable under Sections 452, 143 and 506 of the Indian Penal Code and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "Atrocities Act"). Therefore all these Petition/ Applications are heard together and being disposed of by the common order.

2. Learned counsel appearing for the Petitioners/ Applicants submits that in fact there was some dispute between the complainant and purchaser Sou. Minakshi w/o Gangadhar Swami and others with regard to landed property bearing Gut No.162/2 admeasuring 4 H. 94 R. situated at Udgir, District-Latur. The said property was originally owned by Sunil Bhalerao, however the said property was standing in the name of minor daughters of said Sunil Bhalero. On said demise of Sunil

Bhalerao, wife of Sunil Bhalerao, namely Mangala decided to sale out said property and accordingly Misc. Civil Application No.1 of 2015 was filed before the District Judge, Udgir on 8th January, 2015, seeking permission to sale the said land standing in the name of minors. In the said proceedings complainant Abhijit Malhari Somwanshi had raised an objection for the prospective sale of land in favour of Minakshi w/o Gangadhar Swami. Subsequently, on 14th September, 2015, a compromise purshis Exhibit 26 was filed whereby complainant has stated that he has no objection for effecting sale in favour of Minakshi Gangadhar Swami and hence his objection be waived. Consequently, Mangala Sunil Bhalerao has sold out land Gut No.152 in favour of Minakshi Gangadhar Swami for valuable consideration.

3. It is further submitted that, the complainant Abhhijit Malhari Somwanshi with an ulterior motive, on 1st July, 2015, had lodged

F.I.R. bearing Crime No.87 of 2015 with Udgir Police Station for an offence punishable under Section 406, 420 read with 34 of the Indian Penal Code against Mangala Sunil Bhalerao and Minakshi Gangadhar Swami alleging that, on 24th March, 2011, Mangala Sunil Bhalerao had executed an agreement to sale in favour of complainant to sale out land bearing Gut No.162/2 for valuable consideration of Rs.32,00,000/-. It has been further alleged that, the complainant has paid the amount of Rs.2,50,000/- in favour of said Mangala as earnest amount in presence of Petitioner No.2 Pramod Rajurkar. However, it has been also alleged that, inspite of repeated request, said Mangala Sunil Bhalerao has failed to execute conveyance in his favour and ultimately on 9th September, 2014, said Mangala has executed sale deed of said property in favour of Minakshi Gangadhar Swami vide registered sale deed and thus he has been cheated by Mangala Sunil Bhalerao and Minakshi Gangadhar Swami. Subsequently, complainant Abhijit Malhari

Somwanshi settled dispute with Mangala Sunil Bhalerao and Minakshi Gangadhar Swami. Accordingly, on 21st December, 2015, complainant has filed an affidavit before the Investigating Officer and accordingly his statement was recorded by the police authorities wherein complainant has categorically stated that he has lodged a complaint under some misconceptions and on account of some misunderstanding. It is submitted that the complainant Abhijit Malhri Somwanshi has also objected the mutation of land bearing Gut No.162/2 in favour of subsequent purchaser Minakshi Gangadhar Swami before the Tahsildar. Subsequently, on 1st February, 2016, the complainant has also filed a purshis before the Tahsildar and stated that the grievance has been redressed and necessary mutations be recorded in favour of the purchaser.

4. It is further submitted that one of the accused namely Vikram Nilkant Sankaye, i.e.

Applicant in Criminal Application No.2745 of 2016, who is senior practicing Advocate at Udgir, appeared for compliance in Misc. Civil Application No.1 of 2015 filed by Shradha and Mangala Bhalerao, as per the provisions of Section 29 of Guardian and Wards Act, 1890 before the District Court, Udgir. It is submitted that Petitioner No.1 - Aditya s/o Sharad Deshmukh in Criminal Writ Petition No.974 of 2016 is junior Advocate to said Advocate Vikram Nilkant Sankaye and thus Petitioner No.1 has no concern whatsoever with the complainant. It is submitted that Petitioner No.3 - Pradeep s/o Prakash Joshi stood as witness to the alleged document of agreement to sale in favour of the complainant as regards the disputed property and Petitioner No.3 happens to be brother of Petitioner No.2. Thus all the Petitioners have been falsely implicated with an ulterior motive and to settle some personal scores.

5. It is further submitted that the complainant Abhijit Malhari Somwanshi on 8th April, 2016, lodged impugned First Information Report bearing Crime No.135 of 2016 with Udgir Rural Police Station for an offence punishable under Section 143, 452, 506 of the I.P. Code and also under Section 3(1)(x) of the Atrocities Act against several accused persons alleging that, on 6th April, 2016, at about 7.00 p.m. the complainant was in his house and the accused persons barged into house of the complainant and they have hurled the abuses by his caste and threatened him. It has been further alleged that, the Petitioners and Applicants also humiliated the complainant and threatened him of dire consequences. It has also been alleged that the disputed property was sold out and there was compromise with condition to pay Rs.7,00,000/- to the complainant. However, in order to avoid said payment the complainant has been pressurized. With these allegations, the F.I.R. was belatedly lodged

after two days i.e. on 8th April, 2016 for an alleged incident of 6th April, 2016. The delay in lodging F.I.R. has not been satisfactorily explained which brings the prosecution under the clouds of suspicion. It is submitted that the Petitioners and Applicants apprehending arrest, on 23rd May, 2016, had preferred Criminal Applications before this Court seeking anticipatory bail raising various grounds and contentions. On 29th June, 2016, this Court allowed said applications and released the Petitioners and Applicants on anticipatory bail on certain conditions.

6. It is submitted that absolutely false and frivolous First Information Report is lodged against the Petitioners and Applicants, and therefore present Writ Petition and Applications are filed, challenging the said First Information Report bearing Crime No.135 of 2016.

7. Learned counsel appearing for the Petitioners/Applicants jointly submit that the allegations made in the First Information Report are totally false and far away from the truth. In the first place the alleged incident had not at all taken place, secondly, the Petitioners and the Applicants, i.e. original accused are well educated persons and it can never be believed that they will utter abusive words on caste to the complainant. The allegations made in the complaint are inherently improbable and no prudent person will believe such allegations. It is submitted that though the incident alleged to have been occurred on 6th April, 2016, crime has been registered on 8th April, 2016. There is two days delay in lodging the First Information Report, which is not explained by Respondent No.2. It is submitted that Respondent No.2 is in habit of filing false complaints, as it is apparent from the earlier F.I.R. filed by him bearing Crime No.87 of 2015 with Udgir Police Station for an

offence punishable under Section 406, 420 read with 34 of the I.P. Code against Mangala Sunil Bhalerao and Minakshi Gangadhr Swami, and subsequently filed affidavit stating therein that such incident had never happened, and said complaint was filed by him out of anger. It is submitted that even statement of Respondent No.2 was earlier recorded wherein he stated that complaint filed by him on 19th December, 2015, against Advocate V.N. Sankaye who is Applicant in Criminal Application No.2745 of 2016, to the Bar Council of Maharashtra and Goa with allegation that Advocate V.N. Sankaye has misguided and cheated him and also threatened to kill him. Respondent No.2 stated in the statement recorded by the police officials, that the said allegations are not true and Advocate Sankaye has not given him any threat that he will kill the complainant/ Respondent No.2, and said complaint was filed by him in the heat of anger. Therefore, it is submitted that Respondent No.2 is in habit of

filing complaint with false allegations, so as to extract money. It is submitted that the First Information Report is lodged out of vengeance. As already submitted, there was civil dispute pending between Minakshi Gangadhar Swami and Respondent No.2, wherein the Applicants/Petitioners Advocates represented the parties before the Court. It is submitted that no any specific allegations or role is attributed qua each of the accused and therefore further investigation or continuation of the proceedings on the basis of said First Information Report will be abuse of the process of law and exercise in futility. Therefore, relying upon the grounds taken in the Petition/Applications, Annexures thereto, learned counsel appearing for the Petitioners/Applicants submit that the First Information Report bearing Crime No.135 of 2016 deserves to be quashed. Learned counsel further submits that even if the allegations in the First Information Report are taken as they appear, wherein it is stated that

the accused entered in the house of Respondent No.2 and abused him on caste. Therefore, the said allegations or abuses were not in public view and therefore relying upon the exposition of law in the case of Udaysing Ramsingh Pawar vs. State of Maharashtra and another¹, they submitted that the First Information Report deserves to be quashed.

8. On the other hand, learned A.P.P. appearing for the State invites our attention to the investigation papers and submits that the allegations in the First Information Report get support from the statement of the witnesses. The statements of the neighbourers of Respondent No.2 have been recorded. They have stated that the Petitioners/Applicants came to house of Respondent No.2. On hearing the shouts of Respondent No.2 other persons also gathered there. It is submitted that the delay in filing the First Information Report or whether the alleged offence was

1 [2009(1) Mh.L.J.(Cri.)586]

committed in public view, is a matter of appreciation of evidence and therefore on said grounds, the First Information Report cannot be quashed. Learned A.P.P. submitted that upon careful perusal of the allegations in the First Information Report an alleged offences have been disclosed and needs further investigation. An allegations in the First Information Report will have to be taken as it is and can only be tested during trial. In support of said submissions, learned A.P.P. placed reliance on the Judgment in the case of Bhaskar Lal Sharma and another vs. Monica and others².

9. Learned counsel Mr. A.K. Gawali (appointed to represent Respondent No.2) submits that upon reading allegations in the First Information Report, an alleged offences have been disclosed and needs further investigation. He invites our attention to the said allegations in

² (2014) 3 S.C.C. 383

the First Information Report and also other documents and submits that the prayer of the Petitioners/Applicants for quashing the First Information Report may be rejected.

10. We have given anxious consideration to the submissions of learned counsel appearing for the Petitioners/Applicants, learned A.P.P. appearing for the State and learned counsel appearing for Respondent No.2. We have carefully perused the grounds taken in the Petition/Applications, annexures thereto, the investigation papers. It is true that the Petitioners/Applicants have brought on record that there was civil dispute pending wherein Respondent No.2 was party, and subsequently same was compromised. In his affidavit in the said matter, Respondent No.2 stated that he made allegations out of anger. It is also true that a complaint was filed against Advocate V.N. Sankay, Applicant in Criminal Application No.2745 of 2016, with the Bar Council

of Maharashtra and Goa by Respondent No.2, and subsequently in that respect statement is given by Respondent No.2 that Advocate V.N. Sankaye never threatened to kill him and said complaint was filed by him in anger. It is also true that there is two days delay in lodging the First Information Report. We also find some substance in the argument of the counsel appearing for the Petitioners and Applicants that even if the allegations in the First Information Report are taken as it is, the alleged offence which would attract Section 3(1)(x) of the Atrocities Act, has happened in the house of the complainant/ Respondent No.2 and therefore the same cannot be said to be in public view. We also find considerable force in the argument of the counsel appearing for the Petitioners and Applicants that the accused are highly educated persons and it is improbable that they will utter abusive words to the complainant. However, the Investigating Officer has recorded statements of at least four

witnesses. In their statements, witnesses have stated that on 6th April, 2016, at about 7.00 p.m. they heard quarrel and shouting from the house of Respondent No.2 Abhijit Malhari Somwanshi and many people gathered there, and they heard that accused were abusing Respondent No.2 on his caste and also giving threat to kill him. Apart from the allegation of abusing Respondent No.2/complainant on his caste, the offences are also registered under Section 452, 143 and 506 of the I.P. Code. At the time of considering the prayer for quashing the First Information Report, primarily this Court is supposed to find out from the allegations in the First Information Report, whether the ingredients of an alleged offences have been attracted or otherwise, and if an alleged offences have been disclosed on reading the allegations in F.I.R., then matter should be left to the Investigating Officer for further investigation. The question of delay in lodging the First Information Report or whether the alleged offences

would attract the provisions of Atrocities Act, can be considered at an appropriate stage.

11. In that view of the matter, we are not inclined to entertain the Writ Petition and Criminal Applications. Hence Criminal Writ Petition No.974 of 2016 and Criminal Application Nos.2745 of 2016 and 4895 of 2016 stand rejected.

12. The observations made herein before are prima facie nature, confined to the adjudication of present Writ Petition and Applications. This order will not preclude the Petitioners/Applicants from availing of an appropriate remedy in the event of filing charge-sheet by the Investigating Officer.

. We appreciate the able assistance rendered by learned counsel Mr. A.K. Gawali.

[K.K. SONAWANE, J.]

[S.S. SHINDE, J.]

. After pronouncement of the Order, learned counsel appearing for the Petitioners/ Applicants prays for continuation of ad-interim relief which was in force during the pendency of the Writ Petition and Applications for further four weeks. The prayer is vehemently opposed by the learned counsel appearing for the State and learned counsel appearing for Respondent No.2.

. Since we have rejected the Writ Petition and Applications, continuation of ad-interim relief is not desirable, in as much as it will cause interference in the further investigation by the Investigating Officer. In that view of the matter, prayer stands rejected.

[K.K. SONAWANE, J.]

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[S.S. SHINDE, J.]