

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

Criminal Writ Petition No. 0917 of 2016

District : Osmanabad

Chand Abbasali Shaikh,
Age : 46 years,
Occupation : Service,
R/o. Naldurg,
Taluka Tuljapur,
District : Osmanabad.

.. Petitioner.

versus

1. Rizwan Imdadullal Kazi,
Age : 33 years,
Occupation : Business,
R/o. Kazi Galli, Naldurg,
Taluka Tuljapur,
District Osmanabad.
2. Imran Imdadullah Kazi,
Age : 29 years,
Occupation : Business,
R/o. Kazi Galli, Naldurg,
Taluka Tuljapur,
District Osmanabad.
3. Furkan Shabbir Shaikh,
Age : 28 years,
Occupation : Business,
R/o. Dag Bangla, Naldurg,
Taluka Tuljapur,
District Osmanabad.
4. Mahmood Uloom Kazi,
Age : 33 years,
Occupation : Business,
R/o. Kazi Galli,
Naldurg,
Taluka Tuljapur,
District Osmanabad.

5. Numan Shabbir Shaikh,
Age : 25 years,
Occupation : Business,
R/o. Dag Bangla, Naldurg,
Taluka Tuljapur,
District Osmanabad.
6. Shiraj Rabani Jahagirdar,
Age : 30 years,
Occupation : Business,
R/o. Inamdar Galli,
Naldurg,
Taluka Tuljapur,
District Osmanabad.
7. Sadat Ashpak Inamdar,
Age : 33 years,
Occupation : Business,
R/o. Indira Nagar,
Naldurg, Taluka Tuljapur,
District Osmanabad.
8. Nasir (Chotu) Aashpak Inamdar,
Age : 29 years,
Occupation : Business,
R/o. Indira Nagar, Naldurg,
Taluka Tuljapur,
District Osmanabad.
9. Himayat Yusuf Khateeb,
Age : 28 years,
Occupation : Business,
R/o. Pariwar Hotel,
Bus Stand, Naldurg,
Taluka Tuljapur,
District Osmanabad.
10. Haji Yusuf Khateeb,
Age : 30 years,
Occupation : Business,
R/o. As above.
11. Mubshir Mogul Kazi,
Age : 25 years,
Occupation : Business,
R/o. Kazi Galli,
Naldurg, Taluka Tuljapur,
District Osmanabad.

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DATE : 27TH MARCH 2017

ORAL JUDGMENT :

Heard learned Advocates for the respective parties.

02. Rule. Rule made returnable forthwith. By consent of the learned Advocates for respective parties, heard finally.

03. This petition is filed to challenge the order passed by the Judicial Magistrate (F.C.), Tuljapur, in Criminal Misc. Application No. 292/2012, on 05.12.2012, and also to challenge the order passed by the Addl. Sessions Judge, Osmanabad, below Exhibit 01 in Criminal Revision No. 02/2013, on 23.12.2015.

04. The Criminal Misc. Application was filed before the Magistrate by the present petitioner, complainant, with a prayer to take action against the accused for commission of offences punishable under Sections 307, 326, 324, 504, 506, read with Section 34 of the Indian Penal Code. The complainant had made application to Wakf Board for registration of *Nani Maa Darga* as a Wakf and that was given on 21.05.2009. There was dispute between the complainant on one hand and the accused on the other hand as the accused were against such registration. It is stated in the complaint, that on 24.08.2012, at about 03.30 p.m., the District Wakf Officer came to *Darga* for making enquiry and for making Panchanama. The complainant has contended that the accused were

present and he was also present there and the District Wakf Officer gave direction to the accused for supplying information with regard to income of Darga. When the District Wakf Officer left, accused picked up quarrel with the complainant by asking as to why he had given application for registration of the Wakf.

05. Allegations are made that during quarrel, accused no.02 instigated others to finish the complainant. Allegations are made that accused no.01 gave blow of iron rod on nose of the complainant and then accused nos.03 to 15 also assaulted him on right side of his head and iron bars were used. It is the case of the complainant, that due to the assault made, he has become deaf in right ear. Allegations are made that the remaining accused assaulted him with kick blows and at that time, witness no.01 came there to rescue him. Allegations are made that the accused are influential persons and due to their influence, Police did not take action against the accused even after commission of the offence committed, but they started proceedings under Section 107 of the Code of Criminal Procedure, 1973, against the complainant. It is contended that as he sustained injuries, he was first referred to Primary Health Centre at Naldurg and then he was referred to Civil Hospital at Solapur. He has contended that though he went to Civil Hospital, Solapur, no attention was paid to him and he was told to go back without proper treatment. As he was suffering from

pains, he went to one ENT specialist by name Dr. Girish Harkut, who operated him. After completion of medical treatment, he was discharged from the hospital on 29.08.2012.

06. It appears that the statement of the complainant and two witnesses were recorded. The Magistrate perused these statements and dismissed the complaint under Section 203 of the Code of Criminal Procedure, 1973, by observing that there were inconsistencies in the statements of the complainant and his witnesses and he has not produced medical record in support of his allegations.

07. This Court has gone through the original record which was called in the matter. The record show that the medical record was already produced by the complainant which include the referral card of Primary Health Centre at Naldurg, case paper prepared by Civil Hospital Solapur and also record of treatment given by Dr. Girish Harkut. This record consistently shows that he had sustained injuries in the incident occurred on 24.08.2012 and he was referred by the Police to Primary Health Centre, Naldurg. The record shows that the Primary Health Centre, Naldurg, had referred him to Civil Hospital at Solapur on 24.08.2012. Surprisingly, there is only case paper bearing no. 13899 showing that he was not even properly examined. Then there is record of Dr. Girish Harkut showing that the complainant had suffered grievous injuries and he has become deaf in

his right ear.

08. Though the statements of the witnesses recorded under Section 200 of the Cr.P.C. are not exactly as per the allegations made by the complainant, there was aforesaid record and it could have been observed that there was material on record to corroborate the allegations made by the complainant. The circumstances are sufficient to *prima facie* infer that some incident had taken place. If there was some doubt in the mind of the Magistrate, it was open for the Magistrate to give direction to the Police to investigate under Section 202 of the Cr.P.C. into the matter. But instead of doing that, the Magistrate pointed out the inconsistencies in the statement of the complainant and statements of witnesses recorded under Section 200 of the Cr.P.C. The Magistrate ignored the medical record mentioned above and dismissed the complaint under Section 203 of the Cr.P.C.

09. Similarly, the relevant record is not at all considered by the Addl. Sessions Judge. Therefore, this Court holds that interference is warranted in exercise of supervisory jurisdiction of this Court under Article 227 of the Constitution of India. A direction needs to be given to the Magistrate to consider the matter afresh and if he feels that the enquiry in the matter is necessary, he can order enquiry under Section 202 of the Cr.P.C.

10. In the result, the Petition is allowed. The impugned order dated 05.12.2012, passed by the Judicial Magistrate (F.C.), Tuljapur, in Criminal Misc. Application No. 292/2012, so also, the order dated 23.12.2015, passed by the Addl. Sessions Judge, Osmanabad, in Criminal Revision No. 02/2013, are quashed and set aside. Revision is allowed. The matter is remanded back to the Magistrate with a direction to consider the matter afresh and if the Magistrate feels that the enquiry under Section 202 of the Cr.P.C. is necessary, he shall pass appropriate orders. The Magistrate shall not get influenced by the observations made in this judgment about the material on record and he shall pass orders on merits of the case.

11. Rule made absolute in the above terms.

(T.V. Nalawade)
JUDGE

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