

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1376 OF 2003

Shakil Nijam Takildar & ors. ... Petitioners.
Versus
Salam Babasaheb Kakatkar & anr. ... Respondents.

Mr. C.G. Gavnekar, advocate for petitioners.

Mr. Raja Thakare, advocate for respondent No. 1.

Mr. S.R. Agarkar, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : APRIL 6, 2017**

JUDGMENT :

1 Heard the learned Counsel for the petitioners, the learned Counsel for the respondent No. 1 and the learned APP for State.

2 Petitioners herein being aggrieved by the order dated 5/1/2002 passed by Judicial Magistrate First Class, Ajara in Criminal

Application No. 14 of 1999 thereby issuing process against the petitioners for offence punishable under section 302 read with section 34 of the Indian Penal Code, the petitioners have approached this court. Perused the complaint filed by the respondent.

3 The respondent herein has filed a complaint before Judicial Magistrate First Class, Ajara alleging therein that his father is close relative of one Shri Sileman Ibrahim Didbaug, who happens to be the owner of the trust Anjuman Ittehadul Islam, Ajara. That there are two groups in the said trust, due to which there are internal quarrel. It is alleged that on 24/1/1999 the complainant and his father while returning from Sankeshwar were standing on Ajara stand at about 9.30. p.m. They had learnt that some quarrel had taken place nearby Amrai Galli and therefore, out of curiosity they proceeded towards Amrai Galli and when they reached Sambhaji chowk, the petitioner herein had mounted assault upon him and his father on the ground

that they had presumed that his father was the root cause of all the trouble. His father was brutally assaulted with deadly weapons. His father had fallen on the ground. The assembled people had presumed that his father expired and therefore, they had fled from the spot. Thereafter, he admitted his father in the hospital and his father had receded into coma. The complainant was also injured and his statement was recorded in the hospital. He had incorrectly stated some words. According to him, on 31/1/1999 he had approached the police station and police had not taken any action and therefore, he was constrained to file the complaint.

4 It is a matter of record that on 24/1/1999 at about 10 p.m. police constable Shripati Dange working as police constable had lodged a report at the police station alleging therein that on that day i.e. on 24/1/1999 he was on patrolling duty. On that day, there was election of Jawahar Nagari Credit Society. There was quarrel

between two groups of the said trust. The complainant police constable had learnt that some quarrel was going on near Amrai Lane. He along with police rushed to the spot. The other constables had also reached the spot. The police personnels were trying to pacify both the groups. The mob had become violent and had pelted stones on the police, due to which some of the police personnels had got injured. That the said mob had attacked upon Babalal Kaktikar and had brutally assaulted him. He was taken to the hospital. On the basis the report lodged by the police constable Shri Dange Crime No. 8 of 1999 was registered at Ajara Police Station against the accused persons for offence punishable under section 143, 147, 148, 149, 307, 337 of the Indian Penal Code.

5 It appears from the record that during the investigation of the Crime No. 8/1999, Babasaheb Kakatikar had succumbed to the injury. Hence, section 302 was added in Crime No. 8 of 1999. The

investigation was completed and charge-sheet was filed against the accused for offence punishable under section 143, 147, 148, 149, 302, 307, 353, 337, 332 and 135 of the Bombay Police Act. It was registered as RCC No. 68 of 1999. The case is committed to the Court of Sessions and is registered at Sessions Case No. 8 of 2000. It appears that the charge was framed in Sessions Case No. 8 of 2000. It is pertinent to note that the complainant in Criminal Case No. 5 of 2002 happens to be an injured witnesses in Sessions Case No. 8 of 2000. He is an eye witness in Sessions Case No. 8 of 2000.

6 It is further pertinent to note that in respect of the same incident, the Petitioners are charge-sheeted for offence punishable under section 302 of the Indian Penal Code. In fact, there was no necessity to issue process against the petitioners under section 302 of the Indian Penal Code as the Court had already taken cognizance of

the offence in Crime No. 8 of 1999. It is further pertinent to note that the witnesses in both the cases would be the same.

7 Learned Counsel submits that the witnesses in both the cases would be the same. There are eye witnesses to the incident including the complainant in Crime No. 8 of 1999. It appears from the record that the complainant was given an impression that the charge-sheet would not be filed under section 302 of the Indian Penal Code and therefore, has filed the instant proceedings. The very fact that the accused are being prosecuted under section 302 of the Indian Penal Code by the State, it would not be necessary to commit the case arising out of RCC No. 5 of 2002 to the Court of Sessions.

8 The learned Counsel for the respondent/complainant fairly submits that the father of the complainant had recorded in the coma and died after 90 days. Since he had died in the same incident, the

charge-sheet is filed under section 302 of the Indian Penal Code. In view of this, the order of issuance of process in R.C.C. No. 5 of 2002 deserves to be quashed and set aside, as it would be an abuse of process of law.

9 The Writ Petition stands allowed in terms of prayer clause (b).

10 It is pertinent to note that in this case, the High Court had not stayed the proceeding in Sessions Case No. 8 of 2000. However, the petitioners and the co-accused had given impression to the learned Sessions Judge that both these cases would be amalgamated and therefore, the learned Sessions Judge had not proceeded with the further stages of trial in Sessions Case No. 8 of 2000 due to long pendency in this court for almost 14 years. Learned Sessions Judge seized with the Sessions Case No. 8 of 2000 is requested to make an endeavour to take Sessions Case on record as early as possible and

expedite the same. The learned Sessions Judge shall make every endeavour to conclude the recording of evidence within 10 months from the date of receipt of this order.

11 Rule is made absolute in the above terms. Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)