

CRIMINAL APPLICATION NO.113 OF 2016

Mr.Indrajeet P. Kulkarni with Ms.Shilpa S. Desai for Applicants.
Ms.M.H.Mhatre, APP, for the Respondent-State.
Ms.Indrayani M. Koparkar with Ms.Kirti Godbole for Respondent
no.3.

Date of Reserving the Judgment : 7th April 2017
Date of Pronouncing the Judgment : 18th April 2017

1. The Applicants have invoked inherent powers of this Court under Section 482 of Code of Criminal Procedure, 1973 and sought to challenge First Information Report (`FIR') dated 25th June 2015 registered with Navghar Police Station vide CR No.138 of 2015 for offence punishable under Section 326 read with Section 34 of Indian Penal Code. The said FIR was registered at the instance of Respondent no.2. The Applicants were arrayed as accused nos.1 and 2 in the impugned FIR.

The complainant is residing at the address mentioned in the FIR along with her daughter Ms.Kirti. The brother of the

complainant (Applicant no.1) and his daughter (Applicant no.2) are residing on the ground floor of the same premises. All of them are closely related to each other. However, there are property disputes amongst them since last about ten to twelve years. On 25th June 2015, the complainant and her daughter Kirti had visited Swami Samarth Math. On account of dispute, the complainant had informed the Applicants-accused that they should not install a stall in the Matt premises. The Applicant no.2 arrived at the scene of the offence along with co-accused Sachin Pandit. The accused insisted that they will put up a stall at the premises, which was objected to by the complainant and her daughter. The accused viz. Applicants and Sachin Pandit were annoyed with the objection taken by the complainant. They broke open the lock of the shutter and started causing damage in the Matt premises. They also told all the inmates of the Math to vacate the premises. The complainant and her daughter were assaulted by iron rod. The complainant gave a call to Police Control Room and thereafter Police had arrived at the place of incident. It is further alleged that the complainant and her daughter were taken to Veer Savarkar Hospital for treatment. The doctor who treated them informed them that they had suffered fracture to their hands. Hence, the complaint was lodged with Navghar Police Station.

3. Learned advocate appearing for the Applicants submitted that a false case has been registered by Respondent no.2 on account of enmity. He submitted that there are property disputes for a long period of time between Applicants and the complainant. He further submitted that the complainant has exaggerated the incident while

lodging the FIR. He further submitted that the Applicant no.2 had also lodged a complaint with same Police Station against the complainant and her daughter Kirti and on the basis of the said complaint an offence has been registered against them vide CR No.139 of 2015 under Section 324 read with Section 34 of Indian Penal Code. He further submitted that the complainant has not attributed any specific role to the Applicants in the FIR. He also submitted that there is doubt about the version of the complainant that iron rod was being used in commission of the alleged crime. He submitted that the iron rod was not recovered during the course of investigation and there is no Panchanama in that regard. He relied upon the decision of Apex Court in case of **Gian Singh Vs. State of Punjab and another**¹. By placing reliance upon the said decision, it was submitted that this Court may exercise inherent powers under Section 482 of Code of Criminal Procedure, 1973 and quash and set aside the impugned FIR.

4. Learned APP and learned advocate for Respondent no.2 submitted that prima facie a case has been made out against the Applicants. Learned APP produced investigation papers which were perused by us. We have noted that there were injuries on the person of the complainant and her daughter Kirti.

5. On reading the FIR, prima facie, we are of the opinion that involvement of the Applicants has been shown in the incident dated 25th June 2015. This is not the stage to appreciate the evidence. The submission that there is no recovery of iron rod and thus the

¹ 2012-CRI.L.J.-4934

proceedings may be quashed, cannot be accepted, at this stage. The submissions of learned advocate for the Applicants that incident is a fall out of property dispute, also cannot be appreciated, as prima facie, the FIR has attributed role to the Applicants. It is also pertinent to note that the Trial Court while framing the charge would take into consideration the evidence on record and would frame appropriate charge against the accused. The accused no.3 Sachin Pandit had preferred Criminal Application No.107 of 2016, which has been dismissed by us vide order dated 7th April 2017. The statements of the complainant prima facie discloses commission of an offence. The Applicants are specifically named in the FIR with overt act being attributed to them.

6. The decision relied upon by learned advocate for Applicants in the case of **Gian Singh (supra)** clearly states that power under Section 482 of Cr.P.C. makes it obligatory on High Court to exercise its power with utmost care and caution. In view of the aforesaid circumstances, we are not inclined to quash the impugned proceedings by invoking inherent powers under Section 482 of Cr.P.C.

7. We, therefore, pass following order :

(a) Criminal Application No.113 of 2016 is dismissed, with no order as to costs.

(PRAKASH D. NAIK, J.)

(S.C.DHARMADHIKARI, J.)

MST