

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

CRIMINAL APPLICATION NO. 4631 OF 2014

1. Datta S/o Vishvanath Gadhve,
Age:- 63 Years, Occu.:- Agri,
2. Digambar S/o Vishvanath Gadhve,
Age:- 65 Years, Occu.:- Agri,
3. Anand S/o Nagorao Gadhve,
Age:- 45 Years, Occu.:- Agri,
4. Govind S/o Nagorao Gadhve,
Age:- 42 Years, Occu.:- Agri,
5. Shivaji S/o Datta Gadhve,
Age:- 35 Years, Occu.:- Agri,
6. Vishvanath S/o Datta Gadhve,
Age:- 32 Years, Occu.:- Agri,
7. Madhav S/o Digamber Gadhve,
Age:- 35 Years, Occu.:- Agri,

Applicants No.1 to 7 are resident of
Gadhavewadi, Tq.:-Mukhed, Dist.:- Nanded.

8. Narayan S/o Gnyanoba Katale,
Age:- 30 Years, Occu.:- Agri,
9. Tukaram S/o Sambha Katale,
Age:- 35 Years, Occu.:- Agri,
10. Gnyanoba S/o Tukaram Katale,
Age:- 54 Years, Occu.:- Agri,
11. Ramesh S/o Vitthal Katale,
Age:- 31 Years, Occu.:- Agri,

Applicants No.8 to 11 are resident of
Jamb (Bk), Tq.: Mukhed, Dist.: Nanded.

12. Shriram S/o Subhanrao Gadhve,
Age:- 28 Years, Occu.:- Labour,
R/o.:- At Gadhve wadi, Post:- Jamb (Bu.),
Tq:- Mukhed, Dist. Nanded.

... **APPLICANTS**
(Ori. Accused)

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Superintendent of Police,
Nanded, Dist. Nanded.
(Through Mukhed Police Station,
Mukhed, District Nanded.)
3. Gajanan s/o Nagnath Mundkar,
Age: 32 years, Occu: Agri. & Private Service,
R/o. Gadhvewadi, Tq. Mukhed,
Dist. Nanded.

... **RESPONDENTS**

...
Mr. N. S. Kadarale, Advocate for Applicants.
Mr. M. M. Nerlikar, APP for Respondent Nos.1 & 2.
Mr. G. G. Kadam, Advocate for Respondent No.3.

...

WITH

CRIMINAL APPLICATION NO. 477 OF 2017

IN

CRIMINAL APPLICATION NO. 4631 OF 2014

1. The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya, Mumbai-32.

2. The Superintendent of Police,
Nanded, Dist. Nanded.
Through the Police Station Mukhed,
Tq. Mukhed, District Nanded.

... APPLICANTS
[Ori. Respondent No.1 and 2]

VERSUS

1. Datta S/o Vishvanath Gadhve,
Age:- 45 Years, Occu.:- Agri,
2. Anand S/o Nagorao Gadhve,
Age:- 42 Years, Occu.:- Agri,
3. Shivaji S/o Datta Gadhve,
Age:- 45 Years, Occu.:- Agri,
4. Govind S/o Nagorao Gadhve,
Age:- 42 Years, Occu.:- Agri,
5. Shaivaji S/o Datta Gadhve,
Age:- 35 Years, Occu.:- Agri,
6. Vishwnath S/o Datta Gadhve,
Age:- 32 Years, Occu.:- Agri,
7. Madhav S/o Digamber Gadhve,
Age:- 52 Years, Occu.:- Household,

Res. No.1 to 7 r/o Gadhavewadi,
Tq.:-Mukhed, Dist.:- Nanded.
8. Narayan S/o Gnyanoba Katale,
Age:- Years, Occu.:- Agri,
9. Tukaram S/o Sambha Katale,
Age:- 35 Years, Occu.:- Agri,
10. Gnyanoba S/o Tukaram Katale,
Age:- 54 Years, Occu.:- Agri,

11. Ramesh S/o Vitthal Katale,
Age:- 31 Years, Occu.:- Agri,

Respondent No.8 to 11 are
R/o. Jamb (Bk), Tq.: Mukhed,
Dist.:- Nanded.

12. Gajanan s/o Nagnath Mundkar,
Age: 32 Years, Occu: Agri. & Private Service,
R/o. Gadhavevadi, Tq. Mukhed,
Dist. Nanded.

... **RESPONDENTS**

(Ori. Petitioner, respondent No.12
is ori. Respondent No.3)

...

Mr. M. M. Nerlikar, APP for Applicants.

Mr. N. S. Kadarale, Advocate for Respondent Nos.1 to 11

Mr. G. G. Kadam, Advocate for Respondent No.12.

...

CORAM : **T. V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 26th July, 2018.

ORAL JUDGMENT: (Per T. V. Nalawade, J.)

. The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR No.36 of 2014, registered in Mukhed Police Station, District Nanded. Both the sides are heard.

2 By making investigation of C.R. No.132 of 2013,

registered in the same police station, charge-sheet is already filed for offences punishable under Sections 324, 149 etc. of the Indian Penal Code. The said FIR was given by one Vasant. Other injured witness and name of Gajanan was mentioned as a witness. Gajanan was not in a position to give FIR and his statement was recorded subsequently in C.R. No.132 of 2013. Then Police recorded one more statement of Gajanan as he had sustained more serious injuries and his statement is treated as FIR of C.R. No.36 of 2014 for offences punishable under Sections 307, 149 etc. of the Indian Penal Code

3 The contentions of the State that more serious allegations are made by Gajanan and so the investigating agency is entitled file separate charge-sheet on the basis of subsequent statement given by Gajanan is not acceptable as the statement of Gajanan was recorded by Police in C.R. No.132 of 2013 on 29th October, 2013. Similarly, the contention of the learned counsel for Applicants that the further investigation is not possible, new offence cannot be added, new Accused cannot be added and the Court can use the provision of Section 319 cannot be accepted as investigation is already made and the power given to Police under Section 173(8) of the Code of

Criminal Procedure cannot be disputed.

4 The submissions made by the learned counsel for Applicants about improvements in subsequent statements made by witnesses can be considered only during trial. If the investigating agency is satisfied about the necessity to add offence and Accused, at this stage, this Court is not expected to interfere in the matter and appreciate the material collected by Police and give the relief claimed. Filing of two charge-sheets against same persons under different provisions of Indian Penal Code for the same incident is not possible in view of Article 20(2) of the Constitution of India and Section 300 of the Code of Criminal Procedure.

5 The learned counsel for Applicants submitted that the observations made by this Court may be contrary to the reply affidavit filed by the investigating agency in the present matter. In that case also, the Court is entitled to have its own view and on the basis of the relevant provisions of the Code of Criminal Procedure, this Court has formed opinion and so the contentions, which may be contrary to the view taken by the Court and which are present in the reply affidavit,

can be of no use to Accused.

6 In the result, Criminal Application No.4631 of 2014 is partly allowed. The FIR No.36 of 2014, registered in Mukhed Police Station, District Nanded as independent crime on 3rd April, 2014, is quashed and set aside, the said FIR and all the papers of investigation from said FIR can be used as supplementary statement of Gajanan and other witnesses and further investigation made by Police in view of power given to Police under Section 173 (8) of the Code of Criminal Procedure. The investigating agency is entitled to file supplementary charge-sheet in the charge-sheet already filed in C.R. No.132 of 2013 lodged by Vasant. In the supplementary charge-sheet, the investigating agency is entitled to mention additional Sections like 307 and 325 of the Indian Penal Code if they have formed opinion that such charge-sheet needs to be filed and they are entitled to mention the names of additional witnesses and also Accused persons in view of the power given to Police under aforesaid section of the Code of Criminal Procedure. If such supplementary charge-sheet is filed by the Police, the case will be treated as a case filed under Section 307 of the Indian Penal Code and accordingly, the

learned Judicial Magistrate First Class is to take further steps. Accordingly, the order is made and Criminal Application No.4631 of 2014 is disposed of.

7 Criminal Application No.477 of 2017, filed by the State for expeditious hearing is also disposed of.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]

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