

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

CRIMINAL APPLICATION NO. 435 OF 2018

Ananda s/o Marotrao Sawant Aged 50 years, Occu: Service, R/o 1-18-663, Near Mahadeo Mandir, Maganpura, Nanded 431 601	...	Applicant (Orig.Accused)
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VERSUSA

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| 1. The State of Maharashtra
Through Police Station Officer,
Umri, Tq. Umri, Dist. Nanded. | | |
| 2. Govind Shankar Sawant
Age 55 years, Occu: Agri.
R/o Jamgaon Tq. Umri,
Dist. Nanded.. | ... | Respondents |

Mr. Sanjay D. Kotkar, Advocate for the applicant.
Mr. S. B. Pulkundwar , APP for the respondent State.

CORAM	: T. V. NALAWADE AND K. L. WADANE, JJ.
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DATE:	: 27th June, 2018
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JUDGMENT (Per K. L. Wadane,J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, the application is taken up for final hearing.

2. The application is filed under section 482 of the Code of

Criminal Procedure for quashing of first information report bearing Crime No. 59/2017 registered with Police Station Umari, Dist. Nanded for the offence punishable under Section 323, 324, 504, 506 read with 34 of the Indian Penal Code and consequential charge sheet bearing RCC No.64/2017 pending on the file of learned J.M.F.C. Umari, Dist. Nanded to the extent of the applicant.

3. The complainant has lodged complaint against the Applicant -Anand Marotrao Sawant and other accused persons namely Balwant Sawant, Gajanan Sawant and Balu Sawant all r/o Jamgaon Tq.Umari, alleging that on 03.04.2017 while the complainant was in his field at 6.00 p.m. alongwith his wife, one Balwant Sawant, adjacent landholder came there and asked the complainant as to why he came through his field and abused the complainant. Though the complainant told him that he was not entered or passed through his field, Balwant assaulted the complainant with a stick and caused injury to him. When wife of the complainant came there, accused Balwant also assaulted her by pulling her hair. It is alleged that other accused persons namely Gajanan Sawant, Balu Prakash Sawant, who were present nearby also came there and assaulted the complainant and his wife with kick and fist blows and

gave threat to kill the complainant. It is alleged that these accused persons have assaulted and threatened the complainant and his wife on the instructions of the applicant and accordingly the complainant lodged the complaint against the accused persons including the applicant and the offence as referred above came to be registered.

4. Heard Mr. Sanjay D. Kotkar, learned counsel for the applicant, and Mr. S. B. Pulkundwar, learned APP for the respondent State.

5. It appears from the contents of the first information report that allegations of abuse and assault with stick, kick and fist blows so also threat of killing as narrated in the F.I.R. are made against other accused persons. Thus, specific allegations appear to be against the other accused persons. The allegation against the present applicant is that other accused persons have assaulted and abused the complainant and his wife on the instruction of the applicant.

6. During investigation, the Investigating Officer has recorded statements of various witnesses including, complainant, his wife so also one Sau.Vijaymala Shinde and Dattahari Shinde who were stated to be present at the place of alleged incident and submitted the charge-sheet. We have perused the statements of witnesses i.e. complainant and other

witnesses recorded by the investigating officer. Statement of all these witnesses are in line with the contents of the first information report.

7. From the record, it appears that the applicant is a Government servant and residing at Nanded. None of the witnesses have stated that the applicant was present at the place of alleged incident. There is no material particular quoting any specific instance against the applicant so as to attract the offence as alleged against him. Allegation against the applicant, in the first information report is vague and general in nature. On its face, the complaint does not constitute any offence against the present applicant. The applicant is a serviceman and it does not appear that he has any concern with the incident alleged in the FIR. Therefore, we found considerable force in the argument of Mr. Kotkar, learned counsel for the applicant for quashing the F.I.R. to the extent of the applicant.

8. In view of the above, to prevent the abuse of process of law, we find that discretion needs to be exercised in respect of the present applicant. Hence following order:

O R D E R

i. Application is allowed

- ii. First information report bearing Crime No. 59/2017 registered with Police Station Umari, Dist. Nanded for the offence punishable under Section 323, 324, 504, 506 read with 34 of the Indian Penal Code and consequential charge sheet bearing RCC No.64/2017 pending on the file of learned J.M.F.C. Umari, Dist. Nanded are hereby quashed and set aside to the extent of Applicant Ananda Marotrao Sawant.
- iii. Rule is made absolute in the above terms.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

JPC