

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

CRIMINAL APPLICATION NO. 767 OF 2010

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| 1. Vishnu s/o Narsappa Bol
Age 60 years, Occu: Agri. | ... | Applicants
(Orig.Accused) |
| 2. Jalindhar s/o Vishnu Bol
Age 30 years, Occu: Agri. | | |
| 3. Shantabai w/o Vishnu Bol
Age 50 years, Occu: Household | | |
| 4. Vaijinath s/o Vishnu Bol
Age 30 years, Occu: Agri. | | |
| 5. Sangeeta w/o Vaijinath Bol
Age 30 years, Occu: Household | | |
| 6. Karuna w/o Neminath Kaanchankote
Age 26 years, Occu: Household | | |

All R/o Yakatpur, Tq. Ausa, Dist. Latur

VERSUS

- | | | |
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| 1. The State of Maharashtra | | |
| 2. Vidyatai w/o Shashikant Patil
Age 35 years, Occu: Household
R/o Mantri Nagar, Latur, Dist. Latur. | ... | Respondents |

Mr. Sachin S. Deshmukh, Advocate for the applicants
Mr. M. M. Nerlikar, APP for the respondent State.
Mr. R. V. Naiknavare Advocate for respondent No.2

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

DATE: : 18th July, 2018

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 applicants have challenged the first information report bearing Crime No.141/2009 registered against them with Ausa Police Station, Dist. Latur for the offence punishable under sections 395 and 354 of the Indian Penal Code at the instance of respondent No.2.
3. On 18.12.2009, respondent No.2 herein lodged complaint to the police station alleging that applicant No.1, his two sons and three daughter-in-laws, armed with Sickle, Axe, and Sticks, assaulted her and also gave fist blows, abused her so also snatched her golden wring, bangles, diamond ring and amount of Rs.25,000/-. As a result, the complainant became unconscious and was shifted to the Hospital by her driver. It was further alleged that the present applicants also tried to outrage her modesty and therefore, the offence came to be registered against the applicants, as referred above.
4. Heard Mr. Sachin Deshmukh, learned counsel for the applicants, Mr. M.M. Nerlikar, learned APP for the State and Mr. R. V. Naiknavare, learned counsel for respondent No.2.

5. Mr. Deshmukh, the learned counsel for the applicants submits that even prima facie reading of the complaint discloses that the complaint has been filed with ulterior motive, to counter the complaint made by applicant No.1. Moreover, in absence of their being corresponding injuries to the complainant as alleged in the complainant, at no point of time the complainant was referred to the Hospital nor the witnesses supports the complaint.

6. We have perused the papers of investigation, particularly, statements of witnesses namely Shripati Lakhane and Dinkar Suryawanshi, who have stated before the police that the incident occurred in the land of applicant No.1 in Toor crop. There was quarrel between ladies. These witnesses appear to be eye witnesses and they have not deposed anything against any of the applicants as to their particular act of commission of offence. Moreover, name of witness namely Kamlakar Sonwalkar is mentioned in the first information report . On perusal of his statement as well as statement of witness Ganesh Mishra, it appears that both of them have stated before the police that applicant No.3 Shantabai and other two ladies were quarreling with respondent No.2 by saying that the land is belonging to them and respondent no.2 shall not erect cement polls for the purpose

of fencing in the land and the witness Kamlakar separated these three ladies and respondent No.2.

7. On perusal of record, it appears that complainant/ respondent no.2 was referred for medical examination, however, there is no evidence on record to show that respondent no.2 received any injury. Respondent No.2, in her complainant, has alleged that applicant No.1, his two sons, three daughter-in-laws and other 4/5 ladies, armed with Axe, Sickle, sticks, assaulted the complainant and daughter-in-laws of applicant no.1 also assaulted the complainant by kick and first blows. If at all more than 10 persons assaulted the complainant, that too by means of Axe, sickle and sticks, then obviously some injuries were expected to be on the person of respondent no.2. However, there is absolutely no evidence on record to show that respondent No.2 received any injury. On the contrary eye witnesses have not stated anything about the assault by the applicants by means of Axe, Sickle and sticks. Even if statements of eye witnesses accepted to be true, then offence provisions of section under section 323 would be attracted, which is non-cognizable offence.

8. From the record, it appears that there was dispute between the

applicants and respondent no.2 in regard to landed property, for which the applicants have already moved to the concerned police and the matter was referred to Tantamukti Samiti. It is alleged that sons of applicant No.1 have torn sari and blouse of respondent No.2. Eye witnesses in the matter have not supported this aspect, mentioned in the first information report. Therefore, looking to the statements of witnesses and version of the complainant in the first information report, it appears that those are quite contrary to each other.

9. In this background and in view of the fact that there was dispute between the parties over the landed property, it appears that respondent no.2 had given colour to the incident and lodged complaint for the offence punishable under section 395 and 354 I.P.C.

10. In view of the above, in order to prevent the abuse of process of law, the application is allowed. Relief is granted in terms of prayer clause (A).

11. Rule is made absolute in the above terms..

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

JPC