

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 709 OF 2018

1. Shaikh Khalil Shaikh Ismail,
Age 35 years, Occu. Labor,
R/o. Janta Park Gali No. 5,
Taluka Navapur, Dist. Nandurbar.
2. Shaikh Ismail Shaikh Razzak,
Age 65 years, Occu. Retired Teacher,
R/o. As above.
3. Shaikh Naser Shaikh Ismail,
Age 33 years, Occu. Business,
R/o. As above.
4. Shaikh Khalid Shaikh Ismail,
Age 26 years, Occu. Business,
R/o. As above.
5. Rehanabi Shaikh Ismail,
Age 60 years, Occu. Household,
R/o. As above.
6. Sajidabee Shaikh Rafique,
Age 30 years, Occu. Household,
R/o. As above.
7. Bushra Shaikh Ismail,
Age 25 years, Occu. Household,
R/o. As above.

....Applicants.

Versus

1. The State of Maharashtra
Through the Police Sub Inspector,
Police Station, Dharangaon,
Taluka and District Jalgaon.
2. Shaikh Rafique Shaikh Shafique,
Age 32 years, Occu. Business,
R/o. Sath Nagar Mohalla, Main Road,
Paldhi (Bu), Taluka Dharangaon,
District Jalgaon.

....Respondents.

Mr. Deshmukh Saud A.N., Advocate for applicants.

Mr. S.B. Pulkundwar, APP for respondent No. 1/State.

Mr. D.A. Madake h/f. Mr. G.A. Nagori, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.
DATED : JUNE 25, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The proceeding is filed under section 482 of Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for short) for relief of quashing of F.I.R. No. 142/2017 registered with Dharangaon Police Station, Tahsil and District Jalgaon for the offences punishable under sections 392, 326, 448 etc. of Indian Penal Code (hereinafter referred to as 'IPC' for short). The crime is registered on the basis of report given by respondent No. 2 Shaikh Rafique.

3) Private complaint was filed by Shaikh Rafique that on 20.8.2017 all the applicants came to his village Paldi, they entered his house and picked up quarrel. Allegations are made that during quarrel, applicant No. 6, wife of first informant took Rs.20,000/-, which was kept in the cupboard by him and accused No. 4, Shaikh

Khalil (brother of applicant No. 6) gave threats and used sharp weapon 'Vastara' against him and caused injuries. Allegations are made that others assaulted him with fist and kick blows and damage was caused to his household articles. When alleged incident took place on 20.8.2017, he filed private complaint on 28.9.2017 and order of investigation was made on 15.11.2017. The crime came to be registered on 23.11.2017.

4) The papers of investigation show that Shaikh Rafique, the first informant was referred for medical examination by police on 20.8.2017 at 11.30 p.m. He was medically examined in General Hospital Jalgaon and injuries like abrasion, blunt trauma were found on his person. The papers of investigation show that history of assault was given by him on 20.8.2017 and some treatment was given to him.

5) The record shows that on the day of incident, some report was given by first informant, but even copy of said report is not produced. The complaint was filed late and allegations are made against many persons when only two injuries were found on his person. Submissions made show that dispute is going on between the first informant and his wife Sajidabi since long and direction is given to the first informant by the Court to pay monthly

maintenance of Rs.5,000/-. He has not paid maintenance regularly and arrears are pending against him. Criminal cases were filed against husband and his relatives for the offences punishable under sections 498-A, 326 r/w. 34 etc. of IPC in the past. Thus, there were proceedings filed against husband and then F.I.R. of aforesaid nature came to be filed.

6) Only because some injuries were found on the person of husband on the day of incident and he had given history of assault and there are specific allegations against applicant No. 1 that he caused those injuries to the first informant, this Court holds that relief cannot be granted to applicant No. 1 Shaikh Khalil. However, considering the exaggeration made by the husband of Sajidabi and the circumstance that he has avoided to produce the report which must have been given on 20.8.2017, relief needs to be granted to applicant Nos. 2 to 7. In the result, the application of applicant Nos. 2 to 7 is allowed. Relief is granted to them in terms of prayer clause 'C'. Application of applicant No. 1 stands dismissed. Rule is made absolute in aforesaid terms.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/