

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

CRIMINAL APPLICATION NO. 2010 OF 2009

1. Yogesh s/o Ramesh Lahane
Age: 35 years, Occ : Agri.
2. Ramesh s/o Janrao Lahane
Age : 60 yrs. Occ. Agri.
3. Balu @ Managesh Ramesh Lahane
Age : 30 yrs. Occ. Agri.
4. Sharadabai Ramesh Lahane
Age : 55 yrs. Occ. Agri.
5. Sangitabai Martandrao Lahane
Age : 40 yrs. Occ. Agri.
6. Mayur Martandrao lahane
Age : 25 yrs. Occ. Agri.

All r/o Mhasrul, Tq. Jafrabad,
Dist. Jalna.

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Applicants
(Ori. Accused)

VERSUS

1. The State of Maharashtra,
(Copy to be served on Public Prosecutor,
High Court of Bombay, Bench at
Aurangabad for Police Inspector Police
Station Jafrabad Dist. Jalna)
2. Sau. Vaishalibai w/o Rameshwar Chedidar
age 20 yrs Occ. Agri.
R/o Mhasrul Tq. Jafrabad
Dist. Jalna.

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Respondents
(Resp. no. 2 Ori.
Complainant)

Mr. D. R. Irale Patil for the Applicants.

Mrs. P. V. Diggikar, APP for Respondent - State.

Mr. R. S. Deshmukh for Respondent No. 2.

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

DATE: : 17th 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 No. 24/2009 dated 05.04.2009, registered against the applicants on the complaint given by the respondent No. 2 for the offence punishable under Section 3(1) (x) of SC and ST (Prevention of Atrocities Act) 1989 with police station Jafrabad.

3. It is the allegation of the respondent No. 2 that on 01.04.2009 at about 6.00 p.m. she went to the well of applicant No. 2 to bring the water. At that time, the applicant No. 2 prevented the complainant from taking water and thrown away her pitcher. It is further alleged that the applicant No. 2 caught hold her hairs, assaulted her with kick blows. At that time, her husband Rameshwar came there on which the applicant Nos. 1 and 2 snatched bead (Pot). The applicant Nos. 4 and 5 caught hold her and

instigated other accused persons by saying “her legs are to be cut”. One Janrao Lahane abused them as “Maharado, Dhedpatale”. It is further alleged that all the accused persons assaulted the complainant, her husband and her father-in-law by stick and kick, fist blows. On the basis of the complaint filed by the complainant offence came to be registered against the applicants as referred above.

4. We have heard the arguments of Mr. D. R. Irle Patil learned counsel for the applicants, learned APP, Mrs. P. V. Diggikar for Respondent – State and Mr. R. S. Deshmukh for respondent No. 2. We have also gone through the documents on record.

5. On perusal of the same, it appears that for the same incident, the husband of the respondent No. 2 lodged a complaint on the same day i.e. on 01.04.2009 and alleged that at about 7.00 p.m., he asked the respondent No. 2 to bring one pitcher water. When she went to bring the water, the applicant No. 1 abused respondent No. 2 on caste by saying “Mahardya Dhedgya”, therefore, the husband of the respondent No. 2 rushed to the spot, at that time, the applicant Nos. 1, 4 and 5 were beating respondent No. 2 with kicks and fist blows. Thereafter, Rameshwar was called on the spot, then the applicant Nos. 1, 2, 4 and 5 assaulted the husband of the respondent No. 2 and his father by stick.

6. On the basis of the information given by the husband of the respondent No.2 the police took the preventive action against the applicants under the provision of Section 107 of Code of Criminal Procedure. Subsequently, it appears that on 05.04.2009 the first information report in question came to be lodged by respondent No.2. If we minutely perused the allegations in the complaint given by the Rameshwar on 01.04.2009 and first information report given by respondent No.2 on 05.04.2009 it reveals that it is in respect of the same incident which took place on 01.04.2009. However, the contents of the two complaints are quite contrary to each other as detailed above. So two persons are telling the different facts regarding the same incident, it is only possible when the persons are telling the facts of the incident by imagination. Otherwise, there cannot be a contrary statement on a material particulars i.e. about the act committed by each of the applicants. In the first information report dated 05.04.2009 there are no allegation against any of the applicants that they have abused respondent No. 2 on her caste.

7. Further, on perusal of the record it appears that one Ramesh who appears to be the father of applicant No. 1 lodged a complaint against the father of respondent No. 2. From the same it appears that there was a dispute between the aforesaid persons regarding sale deed of Gut No.149, 1H 8R in the year 1996. At the time of filing of the complaint itself before the Superintendent of Police of Jalna on 13.10.2003, the applicant No. 2

mentioned in the complaint that the father-in-law of respondent No. 2 threatened them to file a complaint concerning the caste of father-in-law of respondent No. 2. From the record it appears that there is dispute between the parties regarding the well in Gut No. 149 and in the first information report itself, the respondent No.2 has mentioned the reason for delay in filing the first information report i.e. a consultation. So from the record, it appears that the first information report lodged on 05.04.2009 with due deliberation and consultation with the family members. Further, it appears from the record that the respondent No. 2 and her husband entered into the property of the applicants to which they were not entitled to enter. Prima facie, this itself amounts to a criminal trespass upon the property of the applicants. So looking to the allegations and the other record, we are of the opinion that the impugned first information report needs to be quashed and set aside on the ground :

- i) There is delay in filing the first information report that to with consultation.
- ii) Two inconsistent stories about the material allegations are narrated by the respondent No. 2 and her husband, regarding the same incident.
- iii) The applicant No. 2 filed a complaint against the father-in-law of respondent No. 2 in respect of the same property i.e. Gut No. 149 in which the well is situated.

iv) The respondent No. 2 and her father unauthorizedly entered
into the property of the applicant.

8. For the aforesaid reasons, the criminal application is allowed.
Relief is granted in terms of prayer clause (B).

9. Rule is made absolute in the aforesaid terms. Application is
disposed of.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

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