

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2038 OF 2017

- 1] Rajendra Gangadhar Rane,
Age : 53 years, Occu. Service,
R/o Forest Quarters, Near State Bank
of India, Raver, Dist. Jalgaon.
- 2] Dhiraj Uttam Vasaikar,
Age : 40 years, Occu. Service,
R/o Forest Quarters,
Near State Bank of India, Raver,
Tal. Raver, Dist. Jalgaon. ...Applicants

Versus

- 1] The State of Maharashtra,
through Incharge Police Officer
Raver Police Station, Raver,
District – Jalgaon.
- 2] Sow. Bhagabai Vasant Jadhav,
Age : 43 years, Occu. Nil,
R/o Village Lalmati Taluka-Raver,
District- Jalgaon. ...Respondents

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Mr. S. R. Andhale, Advocate for Applicants.

Mr. S. J. Salgare, A. P. P. for Respondent No. 1-
State.

Mr. V. P. Patil, Advocate for Respondent No. 2.

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**CORAM : T. V. NALWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 11-12-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

01. Rule. Rule made returnable forthwith. By consent, heard finally.

02. Present application has been filed by the original accused persons invoking the powers of this Court under Section 482 of Cr. P. C. for quashing and setting aside the F. I. R. bearing No. 12 of 2017 registered with Raver Police Station, Raver, Dist. Jalgaon for the offences punishable under Sections 354, 352, 294, 323, 504, 506 read with 34 of I. P. C.

03. Applicant No. 1 is in Govt. service as Range Forest Officer at Raver and applicant No. 2 is also a Govt. servant working with applicant No. 1. It has been contended by the applicants that applicant No. 1 had lodged a report on 28.1.2017 narrating the real facts in the complaint with the same Police Station. The offence has been registered against the present respondent No. 2 and others bearing F. I. R. No. 13 of 2017 for the offences punishable under Section 353, 394, 189, 504, 506 read with 34 of I. P. C. According to the applicants one Jadhav was working with the Forest Department as a daily worker about 25 years ago. But, he was restrained from

working about 15 years ago. He filed complaint (ULP) No. 94 of 2015 before Industrial Court, Jalgaon challenging the act of the Forest Department for not extending his work on daily wage basis. It is contended that thereafter the present respondent No. 2 and said Vasant Jadhav who are the husband and wife started collecting octroi fees unlawfully by stopping vehicles and compelling them to make the payments. Taking into consideration this act on their part, the Forest Department closed the Octroi/naka point. Thereafter, said Vasant Jadhav approached different persons and started raising dispute and threatened the authorities / officers of the Forest Department, so that he should be continued on daily wage basis. It is the contention of the applicants that there was a meeting called on 28.1.2017 at Raver in the office of Forest Department for the implementation of the tree plantation of 50 Crores trees. Said Vasant Jadhav, his wife (respondent No. 2) and one Sopan Patil posing himself as Taluka President of Nationalist Congress Party alongwith 3 other persons came and created hurdles in the official meeting. Abuses given to the applicants in filthy language and therefore, ultimately the applicant No. 1 was required to lodge a report. The applicants contend that those persons might be under fear and with

ill intention managed to lodge the F. I. R. vide C. R. No. 12 of 2017. The said F. I. R. is baseless and concocted. They have therefore prayed for quashment of the F. I. R.

04. Heard learned Advocate Mr. S. R. Andhale for the applicants, learned A. P. P. Mr. S. J. Salgare for State and learned Advocate Mr. V. P. Patil for respondent No. 2. All of them have argued in support of their respective contentions.

05. It is necessary to see what are the contents of the impugned F. I. R. Respondent No. 2 has stated that she resides with her husband and daughter. Her husband is doing daily wage work with Forest Department at Raver since 1989. Her husband has filed case with Labour Court for granting permanency to him. Her husband was doing duty on the Nakas i.e. posts erected by Forest Office at Lalmati. However, applicant No. 1 has closed the said post about 4 months ago and he told her husband that why he has filed case in the Court. However, her husband was told that till the case is decided he should remain at the post, and then applicant No. 1 would give work at different place later on. Therefore, in spite of the fact that the post was closed her husband used to remain at Lalmati post and used to do his work. She further says

that at about 11.30 AM on 28.1.2017 she alongwith her husband, Sikandar Tadvī, Udesing Jadhav, Mango Moti Pawar and Sopan Baburao Patil went to Forest Office to demand opening of the post. At that time, the applicant Nos. 1 and 2 abused her husband and told that he has no concern with the post. Thereafter, he was assaulted by kicks and fist blows on his chest, back, legs and private part. Applicant No. 1 thereafter pushed the respondent No. 2 when she went to rescue her husband and abused her. Sopan Patil then asked both the applicants as to why they are behaving in such a manner with the husband and wife. At that time, the applicant No. 1 abused Sopan Patil and rushed towards him and assaulted him. Applicant No. 1 had then tried to snatch odhani from the head of the respondent No. 2, because of which she felt ashamed. When others tried to advise the applicants, they abused them and applicant No. 1 asked that his revolver should be brought, he would see Sopan Patil.

06. The first and the foremost impression the applicant intended to give in this F. I. R. is that her husband is still continued on the work as a daily wage labour. However, it is to be noted from the official communication of the Forest Department that he has been removed from his service since 2014. As per the F. I. R.

given by the present applicant No. 1, the husband of the respondent No. 2 was removed from the service and work since prior to 15 years ago. Further, it can also be seen from the documents on record that there were complaints against the respondent No. 2 and her husband that they are illegally carrying out the act of collecting the money from octroi post of the Forest Department, though it is not an authorized work. Those complaints are given by the villagers much prior to F. I. R. It appears that thereafter, there was an enquiry by the Forest Department and thereafter, the octroi post was closed down. If such action was taken much prior to the F. I. R., the question of asking the husband of respondent No. 2 to do his duty at the closed post does not arise at all.

07. Perusal of the F. I. R. would also clearly show that there was no absolutely reason for respondent No. 2 and others to go to Forest Office at about 11.30 AM on 28.1.2017. It is clearly contended by the applicants that they were busy in official meeting. Respondent No. 2 does not say that they had taken any kind of appointment of the applicant to meet him. If we peruse the police papers it would clearly show that except the husband of the respondent No. 2 and said Sopan Patil nobody has supported the story given in the impugned F. I. R. On the contrary,

the other witnesses like Sikandar Tadvi, Mango Moti Pawar and Udesing Jadhav whose names have been taken in the F. I. R. also would show that they are saying that the respondent No. 2 and her husband asked them to accompany on the ground that they are meeting the applicant No. 1 in connection with his work. Thereafter, Sopan Patil told applicant No. 1 that Vasant Jadhav should be taken again on work. At that time, the applicant No. 1 told that why he has come to the office since code of conduct has been proclaimed because of elections. Thereafter, there was heat exchange of words between applicant No. 1 and Sopan Patil. Applicant No. 1 asked Sopanrao Patil to go out. Thereafter, the respondent No. 2 and her husband started shouting saying that as to why Sopan Patil has been threatened. Thereupon both the applicants told all of them to go out. No doubt, it is stated that they had abused them, but those abuses have not been given. That means statement of these 3 witnesses would show that said Sopan Patil and respondent No. 2 and her husband had in fact instigated the applicants to abuse. Thereafter, there are statements of the employees of Forest Department who have also stated that the respondent No. 2 and others had come, but, the incident did not take place in the way informant is saying. The medical certificate of the

respondent No. 2 only shows that there was a contusion to the right wrist and in respect of her husband there was only blunt trauma to the right lower chest. There was absolutely no injury to his back, legs and private part. Thus, it appears that since the applicant No. 1 had taken action against the respondent No. 2 and her husband and he has also stopped the illegal activity which the respondent No. 2 and her husband were carrying out; in retaliation the said F. I. R. has been lodged. Therefore, the F. I. R. has been filed with mala fide intention. It would be futile exercise to ask applicants to face the trial when such factors have been brought on record. The evidence collected by Police would also show that some different incident had taken place. It is within the powers of this Court under Section 482 and also within the parameters laid down in **State of Haryana and Ors. V/s Bhajanlal and Ors., [1992 Supplement -1 Supreme Court Cases, 335]** to quash and set aside the F. I. R.

08. Hence, following order;

ORDER

(i)The application is allowed.

(ii)Relief is granted in terms of prayer clause

"B".

(iii)Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALWADE]

JUDGE

Dahibhate/-