

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

Criminal Application No. 01646 of 2018

District : Nanded

1. Ramesh s/o. Dhondiram Aurange,
Age : 57 years,
Occupation : Service
as Assistant Commissioner
of Fisheries, Nanded,
R/o. Nanded.

2. Baban s/o. Nivruttirao Nade,
Age : 52 years,
Occupation : Service,
Assistant Fisheries
Development Officer,
At Nanded,
R/o. Nanded,
District Nanded.

.. Applicants.

versus

1. The State of Maharashtra,
Through the Police Inspector,
Shivajinagar Police Station,
Nanded, District Nanded.

2. Bharatbai w/o. Bapuji Irlewad,
Age : 40 years,
Occupation : Fishery,
R/o. Martala, Taluka Loha,
District Nanded.

.. Respondents

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Mr. Santosh V. Munde, Advocate, for the applicants.

*Ms. V.S. Choudhari, Additional Public Prosecutor,
for respondent no.01.*

Mr. G.D. Kale, Advocate, for respondent no.02.

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

DATE : 03RD SEPTEMBER 2018

JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :

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

02. Present application has been filed by original accused persons for quashment of the first information report lodged at the instance of present respondent no.02 vide Crime No. 0071/2018, registered with Shivajinagar Police Station at Nanded, on 08.04.2018, for offences punishable under Sections 354, 504, read with Section 34 of the Indian Penal Code.

03. The applicants are government servants. They are serving as Assistant Commissioner of Fisheries and Assistant Fisheries Development Officer, respectively. Applicant no.01 is authorized to give approval to allotment of tanks, lakes to Fisheries Societies. There is a tank situated at village Martala which is within the jurisdiction of Bhoi Samaj Macchhimar Society. Respondent no.02 belongs to Walmiki Macchhimar Society, whose jurisdiction is Sugaon Tank in Loha Taluka. Some ladies, including respondent no.02 and gents from Walmiki Macchhimar Society, Sugaon, went to the

office of Assistant Commissioner of Fisheries, on 28.03.2018 before the office could be opened. When the officers from that office wanted to open the office around 10.00 a.m., members of Walmiki Macchimar Co-operative Society obstructed them. Applicants were also amongst those officials. Those persons from Macchimar Society were asking the applicant to give contract of Martala tank to their Society. In the process of agitation, they had beaten applicant no.01 and they had torn his clothes. Other officials were obstructed from doing their office work. Therefore, a complaint was lodged against respondent no.02 and others with Shivajinagar Police Station at Nanded vide Crime No. 0062/2018 for offences punishable under Sections 353, 323, 143, 147 and 149 of Indian Penal Code. The incident was published in daily newspaper 'Dainik Punyanagari'. Police had arrested the accused persons from that offence, including respondent no.02 and they were produced before the court. Those accused persons were than released on bail by the court.

04. It is further case of the applicants, that in order to give a counter blast to the said offence registered against them, respondent no.02 filed first information report vide Crime No. 0071/2018. It was alleged in the said FIR by her, that when she as well as other ladies and gents went to the office of Assistant Commissioner of Fisheries, she alone was

called in the cabin by applicant no.01 and then applicant no.01 had outraged her modesty. It is contended that the said FIR is utterly false. There is inordinate and unexplained delay in lodging that FIR. It was obligatory on the part of respondent no.02 and the police officers to obtain sanction under Section 197 of the Code of Criminal Procedure, 1973, from the competent authority before registration of the FIR. There is no question of outraging modesty of respondent no.02 when, in fact, the applicants were obstructed by the members of Macchimar Society from even entering the office. On these grounds, the applicants have prayed for quashment of the FIR.

05. Heard learned Advocate Mr. S.V. Munde for the applicants. Heard learned Additional Public Prosecutor Ms. V.S. Choudhari for respondent no.01. So also, heard learned Advocate Mr. G.D. Kale for respondent no.02.

06. Perused the police papers as well as the papers produced by the applicants.

07. Learned Advocate for the applicants has mainly relied on the fact that the FIR lodged by applicant no.01 is prior in time and the FIR lodged by respondent no.02 is just a counter blast.

08. Per contra, it has been submitted on behalf of the respondents, that the delay has been explained by the informant in her supplementary statement. She had not lodged the FIR under the fear of being defamed. The investigation has been made by recording statements of the witnesses. So also, statements of the witnesses have been recorded under Section 164 of the Cr.P.C. and, therefore, when there is evidence against the applicants, it is not a proper case to quash the FIR.

09. It is to be noted that the FIR lodged by the applicant i.e. Crime No. 62/2018, under Sections 353, 323, 143, 147 and 149 of the IPC is prior in time. It was registered on 28.03.2018 around 14.22 hours, that means, on the same day of the incident. It has been specifically stated in the said FIR, that in all four female members and one gent were present and they had obstructed the informant i.e. Ramesh Aurange from opening lock of the office. He was manhandled. His shirt and banian were snatched and he was assaulted by means of fist and kick blows. The incident had taken place around 10.00 a.m. Thus, it is to be noted that when he had made specific allegations against respondent no.02 and then she had come to know about it through the newspaper reporting, she had not gone to the police station immediately. She has tried to give an explanation for the delay, that she feared for defamation. It is

to be noted that according to her, at that time itself, other ladies were with her, so also, some gents. It is hard to believe that she would have been alone called in the cabin. She does not claim that she was the chairman or any office bearer of the said Macchimar Society and then she was taken in the cabin under the pretext to have a dialogue. It appears that the business rivalry with other fishery society is also the reason behind the dispute. According to the informant, contract of the said lake was given to their Society till 2021. However, it was abruptly cancelled and then it was given to another Society. Respondent no.02 is not denying her presence on that day at the relevant time. She does not say that she had immediately disclosed what had happened in the cabin to the persons who were accompanying her. None of the witnesses whose statements have been taken show that there was any kind of immediate disclosure though it was tried to be stated by the witnesses, that when she came out of cabin, she was in frightened condition. They also say that they had asked her about the reason but she did not disclose.

10. The incident is alleged to have taken place on 28.03.2018, whereas FIR has been lodged on 08.04.2018. Therefore, there is ample opportunity to concoct the story. The FIR, in question, appears to be only for the purpose as counter blast to the FIR

lodged on behalf of the applicants. Under such circumstance, the case squarely falls under the parameters laid down by the Hon'ble Apex Court, in the case of State of Haryana & others Vs. Ch. Bhajan Lal & others [AIR 1992 SC 604]. Hence, the application deserves to be allowed under the exercise of inherent powers under Section 482 of the Cr.P.C.

11. Hence, the following order :-

(a) The application is hereby allowed.

(b) The first information report bearing Crime No. 0071/2018, registered against the applicants, with Shivajinagar Police Station, Nanded, for offences punishable under Sections 354, 504, read with Section 34 of the Indian Penal Code, is hereby quashed and set aside.

(c) Rule made absolute in the above terms.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE

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Bhagwan
Govindrao
Puranik

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