

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1767 OF 2018

- 1) Mrs. Afreen Faisar Shaikh,
Age 30 years, Occupation Household,
- 2) Mr. Farhaan Farukh Shaikh,
Age 35 years, Occupation Business,
Both R/o Behind Aadarsh School,
Manik Chauk, Ahmednagar.
- 3) Saira Shamsheer Shaikh (Khan),
Age 55 years, Occupation Household,
R/o Baba Bangali, Near Municipal,
School No.4, G.P.O. Road,
Ahmednagar.

...Applicants

Versus

- 1) The State of Maharashtra,
Through its Investigation officer,
Kotwali Police Station, Ahmednagar,
Tq. Dist. Ahmednagar.
- 2) Alyas Shaikh Khalid Shaikh,
Age 38 years, Occupation Household,
R/o Behind Aadarsh School,
Manik Chauk, Ahmednagar
At Present : Numani Nagar, Galli No.3
Malegaon Tq. Malegaon Dist. Nasik.

...Respondents

Mr. N. B. Narwade, Advocate for applicants.

Mr. M. M. Nerlikar, Addl. Public Prosecutor, for respondent
No.1 / State.

Advocate for respondent No.2 absent.

**CORAM : T. V. NALAWADE &
SMT.VIBHA KANKANWADI. JJ.
DATE : 19-12-2018.**

ORAL JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. Rule. Rule made returnable forth. By consent, heard both sides for final disposal.

2. Present application has been filed by the original accused persons invoking the powers of this Court under Section 482 of Code of Criminal procedure for quashing the First Information Report (FIR) bearing Crime No. 194 of 2018, registered with Kotwali Police Station, Ahmednagar, dated 17-05-2018 for the offences punishable under Section 307, 323, 504, 506, 341 read with 34 of the Indian Penal Code.

3. The applicants have contended that, applicant No.2 is the nephew of respondent No.2. Applicant No.1 is the wife of another nephew of respondent No.2 and applicant No.3 is brother-in-law of nephew of respondent No.2. Respondent No.2 resides at Ahmednagar. She has lodged the said report in respect of incident dated 14-05-2018. The applicants contend that, no such incident had ever taken place. In fact a complaint was filed by nephew Faisar Farukh Shaikh on 16-05-2018 in respect of incident dated 14-05-2018 and only the non-cognizable offence is registered against the respondent No.2. The FIR is lodged on 17-05-2018 which is belated. Ingredients of offence punishable under Section 307 of

Indian Penal Code are not at all attracted. The informant is trying to grab the property, and therefore, wild allegations have been made. It would be a futile exercise to ask them to face the trial, and therefore they have prayed for quashment of the report.

4. Heard learned Advocate Mr. N. B. Narwade for applicants, learned Addl. Public Prosecutor Mr. M. M. Nerlikar for respondent No.1- State. Advocate Mr. M. U. Kakade was appointed for respondent No.2, however he was not present on the date of hearing.

5. The informant – respondent has contended that, she was married to one Shaikh Khalid Munshi about 22 years ago. She has one daughter from her husband. Her husband expired about four years prior to 17-05-2018. Since last two years she is residing with her parents at Malegaon. However there is ancestral property in the name of her husband at Ahmednagar. Her name is appearing along with the brother of her husband to the property. It was decided that, the said house property would be put to sell and the consideration amount that would be received would be distributed equally amongst her and brother of the husband. She came to know that, the in-laws have started repairing work of the house, and therefore, she went to Ahmednagar around 12.00 p.m. on 14-05-2018. At that time present applicants and nephew Faisar Farukh

Shaikh were present. She told them that, they should give her share and then they should go ahead with the construction work. At that time, she was restrained from entering the ancestral property of her husband. Applicant No.3 caught hold of her both hands and then Faisar had tried to strangle her by hands. The applicants No.1 and 2 had assaulted her by kicks and fists blows.

6. Thus it can be seen from the contents of the FIR that the incident had taken place at about 12.00 p.m. on 14-05-2018, however the FIR has been lodged on 17-05-2018. There is no explanation for the delay. Important point to be noted is that, one report was given by Police Head Constable P. B. Bhambarkar to Special Executive Magistrate, Ahmednagar for taking action under Section 107 of Code of Criminal Procedure on 16-05-2018 on the basis of statement by the respondent No.2. The said report shows that, the present respondent No.2 went to ask as to why the house has been demolished. Thereupon Farhaan Shaikh Farukh told her that, she has no concern with the property, her husband has expired and she resides at Malegaon. Thereafter, she was abused, threatened. When such report was given by respondent No.2 to the said constable on 16-05-2018 i. e. a day earlier to the present FIR, there was no hurdle for her to give entire account of the events. Now she has improved her version by saying that, there was an attempt to commit murder. Definitely therefore the FIR is an

afterthought act.

7. Perusal of the police papers of investigation carried out uptill now would show that, independent witness is only corroborating to the fact that there was abuses but then he says that it was at about 04.00 p.m. Statement of one Nainaj Ibrahim Shaikh who appears to be the daughter of respondent No.2 would show that she had also come along with respondent No.2 to Ahmednagar and she claims to be the eye-witness. Important point to be noted is that, her presence is not stated in the FIR. There was no hurdle for her to lodge any report.

8. It appears that, respondent No.2 was examined by doctor at about 02.30 p.m. on 14-05-2018 and two injuries were found on her person. It can be seen from the said certificate that, there was a alleged history of assault but there was no sign of throttling. No external injury is seen. However, history of vomiting was given and therefore, some investigations were advised. Daughter of respondent No.2 does not give the time of incident whereas the time stated by the other two witnesses is of 04.00 p.m., whereas in FIR it is 12.00 p.m.. With the background about the complaint filed with Police Head Constable Bhambarkar of Kotwali Police Station by respondent No.2 on 16-05-2018 and with such kind of evidence, it would be the futile exercise to ask present applicants to face trial.

Case is made out to use the powers of this Court under Section 482 of Code of Criminal procedure. Hence, following order.

ORDER

- 1) The application is allowed.
- 2) The relief is granted in terms of prayer clause "B".
- 3) Rule made absolute in those terms.
- 4) The learned counsel appointed remained absent.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.