

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

CRIMINAL APPLICATION NO. 1843 OF 2018

01. Shivaji S/o Murlidhar Kale,
Age- 61 years, Occ- Pensioner & Agri.,
02. Shobha w/o Shivaji Kale,
Age: 55 years, Occ. Household & Agri.,
R/o. Deshmukh Vasti, Patharid Road,
Tisgaon, Tal- Pathardi, Dist. Ahmednagar.
03. Ramesh Karbhari Narwade,
Age: 53 yrs., Occu. Agril,
R/o. Koth Vibhag, Tisgaon,
Tal- Patharid, Dist. Ahmednagar.

... **APPLICANTS**

VERSUS

01. The State of Maharashtra,
Through Police Station Officer,
Pathardi Police Station, Tq. Pathardi,
Dist. Ahmednagar.
- 02 Usha w/o. Sanjay Rajale,
Age: 40 yrs. Occu. Household,
R/o. Garudkar Vasti, Tisgaon,
Tal- Pathardi, Dist. Ahmednagar.

... **RESPONDENTS**

...
Mr. Rajendra S. Kasar, Advocate for Applicants.
Mrs. D. S. Jape, APP for Respondent No.1 / State.
Mr. A. G. Ambetkar, Advocate for Respondent No.2.
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CORAM : **T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 18th September, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

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

2 The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR No.209 of 2018, registered with Pathardi Police Station, District Ahmednagar, for the offences punishable under Sections 326, 324, 323, 504, 506 read with 34 of the Indian Penal Code.

3 The FIR is given by Respondent No.2. The FIR was given on 25th April, 2018 in respect of incident dated 6th April, 2018. In the FIR, allegations are made that on the day of incident at about 10:00 am, when she was present in the field, the Applicants came there, gave abuses and assaulted her with fist blows and kicks. Allegations are made that Applicant, Ramesh assaulted her by using iron bar and due to that she sustained bleeding injury to the head. It

is her case that she was first taken to one hospital from Tisgaon and from there she was shifted to Gajanan Hospital, Paithan for treatment. It is her contention that she could get the certificate of injury after many days and after that, she was approached police to give the report.

4 The contents of FIR show that there is some dispute between the family of the Complainant and Applicants over the boundary of the land. The Applicants are owners of adjoining land and at the relevant time a suit was pending in the Court due to the dispute. The submissions made and record show that Respondent No.2 had approached police on 20th April, 2018 and she had given report that on 20th April, 2018, she was assaulted by all four Applicants in her field. In that report, she had contended that this incident took place out of civil dispute and due to the previous incident of quarrel dated 6th April, 2018. This report was treated as non-cognizable case. This record shows that Respondent No.2 had not contended that any injury was sustained by her in incident dated 6th April, 2018. Due to some queries made by this Court, a certificate issued by Multispeciality Hospital from Tisgaon dated 12th September,

2018, is produced. The certificate is to the effect that the Respondent was brought to this hospital for treatment of head injury on 6th April, 2018 and dressing was done. No case paper of this date is produced and the certificate was issued only after query made by this Court. Photocopies of the bills of medicines and dressing material are produced and they are dated 6th April, 2018. As the case paper is not produced, it cannot be inferred that she had sustained injury due to the assault. She must have given history to Niramay Hospital of Tisgaon and so it was necessary to produce case paper. One more certificate issued by Gajanan Hospital Paithan dated 24th April, 2018 is produced, but this certificate also does not show that treatment was given in this hospital to the Respondent on 6th April, 2018. Thus, there is no record to show that immediately after 6th April, 2018, the Respondent had disclosed to anybody including the doctor that assault was made on her and she had sustained injuries in the assault. On the other hand, in the complaint dated 20th April, 2018, she contended that on that day, she was assaulted by the present Applicants, but on that occasion N.C. was registered for the offences punishable under Sections 323, 504 and 506 of the Indian Penal Code. Thus, it will be abuse of process of law if in the present crime,

Crime No.209 of 2018, case is filed against the present Applicants for the offences punishable under Sections 326, 324, 323, 504, 506 read with 34 of the Indian Penal Code. In the result, the following order is passed:

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, J.]

[T. V. NALAWADE, J.]

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