

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

CRIMINAL APPLICATION NO. 3095 OF 2010

1. Prakash s/o. Narayanrao Salunke
Age: 54 years, Occupation : Business
R/o Pramodnagar, Sector No. 1
Devpur Navgane Road, Dhule.
 2. Gulabrao Narayanrao Salunke
Age : 60 yrs. Occupation: Nil
R/o 36, Anandnagar, Devpur, Dhule.
 3. Sanjay Gulabrao Salunke
Age : 35 yrs. Occupation : Service
R/o. 36, Anandnagar, Devpur, Dhule
 4. Gajendra Jeevanrao Sonawane
Age : 30 yrs. Occupation :
R/o 36, Vidyanagar, Dhule Road Sakri,
Dist,: Dhule.
 5. Sumanbai Jeevanrao Sonawane
Age : 60 yrs. Occupation: Household
R/o 36, Vidyanagar, Dhule Road Sakri,
Dist,: Dhule.
 6. Mangala Prakash Salunke
Age :45 yrs. Occupation: Household
R/o. Pramodnagar, Sector No.1
Devpur Navgane Road, Dhule.
- ... **Applicants**

VERSUS

1. The State of Maharashtra,
(Copy to be served on P.P. High Court,
Bench at Aurangabad)
 2. Police Inspector, Police Station,
Nardana, Dist. Dhule.
 3. Purushottam s/o. Chaitram Patil
Age: 55 yrs., Occ.: Agriculture
R/o : At & Po. Waghadi (Bu.)
Ta.: Shindkheda, Dist.: Dhule
- ... **Respondents**

Mrs. Kalpalat Patil Bharaswadkar for the Applicants.

Mr. S. J. Salgare, APP for Respondent Nos. 1 and 2.

Mr. Mangesh Jadhav h/f S. P. Shah for the Respondent No. 3.

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

DATE: : 03rd August, 2018

JUDGMENT (Per K. L. Wadane,J.):

1. The applicants have challenged the first information report No. 8/2010 dated 23.01.2010 and charge sheet. The respondent No. 3 herein lodged a complaint to the police station stating that in the year 1990 the applicant No. 1 came and requested to remain security for the loan to be obtained by the applicant No. 1. On the request of the applicant No. 1, the respondent No. 3 original complainant namely Purushottam agreed to execute the mortgage deed and accordingly, it was executed in favour of Bhartiya State Bank, Main Branch, Dhule, in the year 1990 itself.

2. On 06.12.2009 the recovery officers from the bank and one Mr. Satish Mohan Lahoti of the Aurangabad, the applicant No. 1 and applicant No. 4 came to the land of respondent No. 3 and informed that since the applicant No. 1 failed to repay the loan amount, therefore, the land of respondent No. 3 was auctioned and it was purchased by one Mr. Satish Mohan Lahoti. The mortgage land of Respondent No. 3 was auctioned

behind the back of respondent No. 3. It is further alleged that on 31.12.2009 at about 7:00 p.m. all the applicants came to the house of respondent No. 3 and assaulted him with kick and fists blows and they further said that if the respondent No. 3 demands the money, then they will kill him. On the basis of the information given by the respondent No. 3, offence came to be registered against the applicants on 23.01.2010, F.I.R. No.8/2010, for the offence punishable under Section 143, 147, 148, 420, 452, 448, 323, 504, 506 of the Indian Penal Code.

3. We have heard the arguments of Mrs. Kalpalata Patil Bharaswadkar learned counsel for the Applicants, Mr. S. J. Salgare, learned APP for Respondent Nos. 1 and 2 and Mr. Mangesh Jadhav h/f S. P. Shah for the Respondent No. 3.

4. The papers of investigation are made available. On perusal of the same, it appears that the applicant Nos. 2 and 3 are the brothers of applicant No. 1. Applicant No. 4 is brother in law, Applicant No. 5 is mother in law of the applicant No. 1 and the applicant No. 6 is the wife of the applicant No. 1.

5. Further, it reveals from the record that the alleged incident took place on 31.12.2009. A medical certificate of applicant No. 2 - Gulabrao Narayanrao Salunke is placed on record, issued by Dr. Shantanu J. Patil dated 16.03.2010 from which, it appears that the applicant No. 2 - Gulabrao Narayanrao Salunke was completely bedridden since last two years due to a

Transient Ischemic Attack which results in paralysis of his right upper as well lower limbs since 31.05.2008. So looking to this document, it appears that the applicant No. 2 was literally bedridden at the time of alleged incident, therefore, it is not possible him to remain present or to commit any act as alleged by the complainant. Further, it appears from the record that the land of the respondent No. 3 was auctioned due to default in payment of loan obtained by the applicant No. 1, therefore, at the most the allegations against the applicant No. 1 Prakash Salunke and his wife Mangala Salunke are acceptable because only those two applicants are directly concerned with the loan and its defaults. Further, the rest of the applicants i.e. the applicant Nos. 2 to 5 have no concern with the transaction between applicant and bank with the respondent No. 3. Applicant No. 4 is the brother-in-law and 5 is mother-in-law of the applicant No. 1. They have no direct concern with the day today affairs with the applicant No.1 and 6. Therefore, it appears from the record that there is exaggeration in the complaint made by the respondent No. 3 to the extent of allegations as against the applicant Nos. 2 to 5.

6. In such circumstances, the application of applicant Nos. 1 and 6 namely Prakash Narayan Salunke and Mangala Prakash Salunke stand dismissed. In respect of those applicants, rule is discharged and interim relief is vacated.

7. The application of applicant Nos. 2 to 5 is allowed. Relief is granted to them in terms of prayer clause (b). Rule is made absolute in

respect of Applicant Nos. 2 to 5.

8. Application are allowed to amend the proceeding to add the prayer for quashing of charge-sheet and the charge-sheet filed against the applicant Nos. 2 to 5 stands quashed and set aside.

9. Application is disposed of.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

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