

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2071 OF 2018

1) Raosaheb Govindrao andhale,
Age 80 years, Occupation Advocate,

2) Sanjay Raosaheb Andhale,
Age 52 years, Occupation Advocate,

Both R/o : Court Road, Ambad
Tq. Ambad Dist. Jalna.

...Applicants

Versus

1) The State of Maharashtra.

2) Sow. Kaushalya Shripat Chandne,
Age 45 years, Occupation Agriculture,
R/o Ramgavhan Tq. Ambad
Dist. Jalna.

...Respondents

Mr. Joydeep Chatterji, Advocate for applicants.

Mrs. D. S. Jape, Addl. Public Prosecutor, for respondent No.1 /
State.

Mr. V. S. Paikrao, Advocate for respondent No.2 (appointed).

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

DATE : 26-09-2018.

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

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

2. Present application has been filed by original accused persons invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure in order to quash the First Information Report vide Crime No. 79 of 2018, registered with Gondi Police Station Dist. Jalna, for the offences punishable under Section 323, 324, 504, 506 read with 34 of the Indian Penal Code and Section 3 (1) (w) (r) (s) of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act (hereinafter referred to as Atrocities Act). The applicants are also praying for quashment of proceedings in Atrocities Special Case No. 34 of 2018 which was on the basis of charge-sheet filed after the investigation in the said crime.

3. Respondent No. 2- informant has contended that there is land dispute pending before Court, between her and applicants. Both the applicants went near her house around 10.00 a.m. of 11.3.2018 and after going near to her, they started saying that why she has gone to Court in respect of dispute about agricultural land. Applicants started abusing her in the name of caste by saying "Tumchi Mangachi Jaat Halkat Aahe, Tumhi Aamche Barobar Kay Karnar Aahe?". Thereafter applicant No. 2 Sanjay Andhale assaulted her with the knife in his hand on her head. She sustained bleeding injury. Applicant No. 1 Sanjay took out chain from his car and assaulted on her left leg and thigh. They gave threats of dire consequences. Her husband and

son rescued her. Therefore, she has lodged the report.

4. The applicants have contended that, they have several pieces of land in Ramgavhan apart from the disputed land. The distance between disputed land and alleged spot of incident is 1/2 km. The dispute is pending since last 15 years between applicants and husband of respondent No. 2. The suit property was owned by one Murlidhar by sale-deed and possessed by applicant No. 1 and his family since 1978. Applicant No. 1 is the uncle-father-in-law (Mama Sasra) of Murlidhar. R. C. S. No. 196 of 2008 was filed against husband of respondent No. 2 in Ambad Court claiming possession. It was decreed in favour of applicants on 01.09.2016. They have filed execution proceeding vide R. D. No. 6 of 2016. The dispute was also taken before various Courts in the past. Applicants were expressing with the police authorities time and again that they would be implicated by respondent No. 2 and her husband in false cases. Written representations have been made to Police. The decree was partly executed on 19-12-2017 after 2 rooms of respondent No. 2 were dismantled. On that day itself applicant No. 1 heard about revenge plan of the respondent and therefore, he gave representation again to Superintendent of Police, Jalna. Applicants had gone to Ramgavhan on 11-3-2018 for routine work. Respondent No.2 and her family members had formed unlawful assembly and assaulted applicants. Applicant No.2 has lodged report

about the said incident vide Cr. No. 78 of 2018. Therefore, in order to give counter-blast to the said FIR, respondent No. 2 has filed present report with malafide intention. There is two hours delay in lodging FIR. The contents of the FIR do not attract any offences. Therefore, they have prayed for quashment of the FIR as well as proceeding.

5. Heard learned Advocate Mr. Joydeep Chatterji appearing on behalf of applicants, learned Addl. Public Prosecutor Mrs. D. S. Jape and learned Advocate Mr. V. S. Paikrao, appointed for respondent No.2. All of them have argued in support of their respective contentions.

6. Admittedly there is civil dispute between the parties. However, it is to be noted that the said dispute is between the husband of respondent No. 2 and applicants. Why applicants would talk to a lady, instead of talking to her husband, with they have dispute is a question. Further, the said dispute is in existence since 2008. This fact is suppressed by her. Applicants have produced on record copy of Execution Petition. The decree is in favour of applicants. Further they have got the decree executed partially on 19-12-2017, when two of the rooms of respondent No. 2 were dismantled. Naturally she would have been annoyed with applicants. Applicants have also produced on record copies of their representations to the Police

expressing fear of implication by respondent No. 2 or her husband in false case. With this background we are required to consider as to whether any evidence is collected by the investigating officer in this case. Since charge-sheet has been filed we can take note of entire evidence.

7. First Information Report has been filed on 11-03-2018. However, prior to this FIR, applicant No. 2 had already filed cross complaint against respondent No. 2, her husband, son etc. for the offences punishable under Section 324, 504, 143, 147, 148 of Indian Penal Code. In respect of this FIR, informant, her son and husband have stated same incident. Another son of respondent No. 2, though not present at the spot has also tried to support others. According to them, applicant No. 2 had given blow of knife on the head of informant, sustaining bleeding injury to her. They have also stated that applicant No. 1 had assaulted her with chain. However the injury certificate of the informant does not say so. There was only one injury of CLW over head and is stated to have been caused by hard and blunt object. Except relatives no other witness is supporting respondent No.2. Thus, with the background of civil litigation and execution of partial decree, it appears that the FIR is the outcome of malafide intention. It is a counter-blast to the report lodged against them by applicant No.2. It is also hard to believe that both the applicants would have abused the respondent No.2 in

the name of her caste in chorus. They were knowing their caste since beginning. Why they would abuse her in the name of caste on that day ? Contents of FIR appear to be improbable. It would be a futile exercise to ask the applicants to face the trial. Under such circumstance relief is required to be granted to the applicants No.1 and 2 by invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure. It is well within the parameters laid down in State of Haryana v/s. Bhajanlal Hence, following order.

ORDER

- 1) Application is hereby allowed.
- 2) Relief is granted in terms of prayer clause "B".
- 3) Rule made absolute in the above terms.
- 4) Fees of the learned Advocate appointed for respondent No. 2 is quantified at Rs.3,000/- which shall be payable by the High Court Legal Services Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.