

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2890 OF 2018

1] Sharad Kondiba Waghmode,
Age : 30 years, Occu. : Service,
R/o Mistry Auto Engg. Pvt. Ltd.
Nagapur MIDC, Ahmednagar.

2] Rambhau Kondiba Waghmode,
Age : 54 years, Occu. : Agril,

3] Bharat Kondiba Waghmode,
Age : 40 years, Occu. : Agril,

4] Rambhaji Kondiba Waghmode,
Age : 38 years, Occu. Agril,

Applicant Nos. 2 to 4 R/o Dindewadi,
Post. Avhane Bk., Tq. Shevgaon,
Dist. Ahmednagar.

...Applicants

Versus

1] The State of Maharashtra,
Through the Investigation Officer
Pathardi Police Station,
District : Ahmednagar.

2] "X" (Orig. informant) ...Respondents

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Mr. D. A. Bide, Advocate for Applicants.

Ms. D. S. Jape, A. P. P. for Respondent No. 1-State.

Mr. Y. B. Bolkar, Advocate for Respondent No. 2.

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CORAM : **T. V. NALWADE &**
SMT. VIBHA KANKANWADI, JJ.
DATE : **13-12-2018.**

JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

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

02. Present application has been filed by the original accused persons invoking the power of this Court under Section 482 of Cr. P. C. to quash and set aside the F. I. R. registered with Pathardi Police Station, Dist. Ahmednagar bearing C. R. No. 475 of 2018 dated 6.8.2018 for the offences punishable under Sections 354, 341, 323, 504 and 506 read with 34 of I. P. C. The applicants have contended that the informant is the sister-in-law of the applicants. However, due to the dispute in respect of landed property the relationship between the applicants and the husband of the respondent No. 2 are strained. Husband of respondent No. 2 has filed R. C. S. No. 52 of 2018 against the applicants seeking injunction. Notices came to be issued on 23.2.2018 on the application Exh. 5 for temporary injunction. It is stated that the dispute between the parties is about the partition. According to the applicants, there was partition in the past and thereafter, they have developed the land. Because of the development in the land belonging to the applicants, the husband of the informant got unhappy and it is stated that

he is unhappy with the land allotted to him and therefore, he filed a suit. In fact the applicant No. 1 is a handicapped person serving at Ahmednagar. Respondent No. 2 has filed another criminal complaint also i.e. bearing Cri. Misc. Application No. 52 of 2018 against the applicants which is still pending against them. Respondent No. 2 and her husband are harassing the applicants and in fact blackmailing them for excessive land beyond their permissible share. Till today the injunction has not been granted by any Court of law against them. When respondent No. 2 filed complaint application against them, she could not succeed and therefore, she lodged the F. I. R. It is the say of the applicants that they were not present at the time and date of alleged incident as they are the resident of Dindewadi, Post. Avhane Bk., Tq. Shevgaon, Dist. Ahmednagar and applicant No. 1 resides at Ahmednagar respectively. The applicant No. 1 is serving in a private company. He was present in his company on the date of incident. He has a CCTV footage regarding his presence at the place of work. He has produced copy of the photographs of CCTV footage. It is stated that the F. I. R. has been filed with mala fide intention. The story narrated in the same is concocted and false with ulterior motive and therefore,

they have prayed for quashment of the report.

03. The application has been opposed by the respondents on the ground that the investigation is still going on and statements of other witnesses are yet to be recorded. It would be at a pre-mature stage if the F. I. R. is quashed and set aside.

04. Heard learned Advocate Mr. B. A. Bide for applicants, learned A. P. P. Ms. D. S. Jape for respondent No. 1 and Mr. Y. B. Bolkar, learned Advocate for respondent No. 2. They all have argued in support of their respective contentions.

05. At the out set, the perusal of the copy of plaint in R. C. S. No. 52 of 2018 would show that the husband of respondent No. 2 filed suit for permanent injunction against the present applicants. It appears that he had also filed application for temporary injunction. However, no ad-interim relief was granted. Thereafter, it appears that the respondent No. 2 had also filed criminal Misc. Application No. 52 of 2018 on 6.2.2018 against the present applicants and others contending that they have committed offences punishable under Sections 452, 354, 427, 143, 147, 148, 323, 504 and 506 of I. P. C. If we peruse the contents of the said

application / complaint, it can be seen that they are similar to the present F. I. R. except the place. It appears that no relief was given to the husband of the informant in the civil suit and therefore, it appears that repeated allegations have been made against the present applicants. Respondent No. 2 is the wife of brother of applicants. It is also stated that at the time of incident the husband of the informant was present. Under such circumstance, instead of causing any harm to the husband initially why the brothers would outrage the modesty of the sister-in-law is a question. This does not appear to be a natural conduct. However, taking into consideration the rivalry and similarity in the allegations in the earlier complaint and the present complaint, it is hard to believe that any such incident would have taken place. Further fact that is required to be considered is that the applicant No. 1 is a handicapped person. He has produced the disability certificate on record. He has also produced the photographs of CCTV footage which show that at the relevant time and date he was present in his company that is the place of job. This falsifies story given in the F. I. R. Thus, when the F. I. R. has been filed with mala fide intention definitely it comes under the guidelines / principles laid down in

State of Haryana and Ors. V/s Bhajanlal and Ors., [1992 Supplement -1 Supreme Court Cases, 335] that this Court should exercise its power under Section 482 of Cr. P. C.

06. Hence, following order;

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]

JUDGE

[T. V. NALAWADE]

JUDGE

Dahibhate/-