

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 1468 OF 2016**

1. Mrs. Mrunalini Nandram Gore,
Age : 46 Years, Occu. Service
as Lecturer in Jaiparwati Mata Junior
College, Ahmednagar,
2. Shri. Nandaram Ganpat Gore,
Age : 49 Years, Occ. Service as
Lecturer in Shri. Shivaji Junior College,
Bodhegaon Tq. Shevgaon,
Dist. Ahmednagar
3. Kum. Sharvari Nandram Gore,
Age : 19 Years, Occ. Education
R/o. All Civil Hudco, Ahmednagar

..PETITIONERS**VERSUS**

1. The State of Maharashtra,
Through The Police Inspector,
Tofkhana Police Station,
Ahmednagar
2. Smt. Manjusha W/o Nitin Kolas,
Age : 48 years, Occ. Private Service,
R/o. 5806 Mankarwada, Delhi Gate
Near Supekar Medical, Ahmednagar

..RESPONDENTS

...

Advocate for Applicant : Mr. V. D. Sapkal
APP for Respondents: Mr. M. M. Nerlikar

...

**CORAM : T.V. NALWADE AND
SMT.VIBHA KANKANWADI,JJ.
DATE : 30-10- 2018.**

JUDGMENT [Per T.V. NALWADE, J] :-

Rule. Rule made returnable forthwith. By consent, heard both the

sides for final disposal.

2. The petition is filed for relief of quashing of FIR No. 316 of 2016, dated 16.10.2016 registered with Topkhana Police Station Ahmednagar for the offences punishable under Sections 452, 342, 323, 504 and 506 read with Section 34 of Indian penal Code. The report was given by respondent No.2 Smt. Manjusha Kolas. Applicant no.1 Mrunalini is real sister of the Manjusha. Applicant no.2 is husband of applicant no.1 and applicant no.3 is daughter of applicant nos. 1 and 2.

3. In the FIR first informant has admitted that applicant no.1 is her sister. He has contended that on 15.10.2016 after 6.00p.m her daughter contacted her on phone and informed that present applicants had entered their property and when the daughter had refused to allow them, they had put a latch to the door from outside. She informed that Saiprasad the son of the brother of the first informant assaulted to them. In FIR it is contended that after learning about the incident she rushed to the house and she noticed that the applicants were still there and they were trying to brake open lock of the room. It is contended that when she prevented them she was assaulted and the applicants said that they wanted to use those rooms for running a tuition class. She approached police on the same day and gave report.

4. The submissions made and the record shows that the aforesaid house property was owned by the father of first informant and applicant no.1. His name was entered in the property card. He died in the year

2008, and the names of his issues like one son and four daughters were entered as heirs in the property card. The father of first informant had filed a proceeding of eviction against the tenant, who was living as tenant in different rooms. The suit was filed on the ground of bonafide requirement. This Court in the Writ Petition No. 2074 of 1992 (Govind Mankar died through his L.Rs Vs. Dattatraya Borlikar) allowed the petition on 26.03.2015 and declared that landlord is entitle to get the possession on the ground of bonafide requirement. Some time was given till 30.09.2015 to the tenant to vacate the premises. This decision was challenged in the Supreme Court but the Supreme Court only gave time up to 31st July 2016 to the tenant to vacate the premises.

5. Submissions made and record show that in the Writ Petition, first informant had represented to this Court that only four legal heirs were left behind by the father. The name of applicant no.1 was not informed as another legal heirs of the deceased father. It was submitted by the learned counsel for the first informant that all efforts were made by the first informant and other legal heirs for taking possession and so the name of the applicant no.1 was not mentioned in the Writ Petition as legal heirs of the previous owner. This submission is not at all acceptable. When party dies, application is required to be filed with affidavit to show the legal heirs left behind by the deceased party. It is clear that the first informant and other sisters played mischief and did not shown the name of the applicant no.1 as legal heirs of the previous

owner party to the proceeding. In any case the right of applicant no.1 in the property as as one successor of the previous owner cannot be disputed and the property needs to be treated as joint Hindu family property of all the successors of the deceased father of the applicant no.1. In view of this circumstances, provision of section 452 cannot be used against the applicants. There is clear possibility that there was some dispute and out of the dispute some incident took place. There is no injury certificate in support of the allegations of the assault possibility is there that some quarrel took place to give colour to the quarrel of cognizable offence the provision of Section 452 of the Indian Penal Code is used. If that section is deleted FIR could not have been registered. In view of the aforesaid discussion, this Court holds that it will be abuse of process of law if the applicants are asked to face the trial for aforesaid offences. In the result following order :-

ORDER

- I] Petition is allowed.
- II] Relief is granted in terms of prayer clause (B).

Rule made absolute in aforesaid terms.

[SMT.VIBHA KANKANWADI]
JUDGE

[T.V. NALAWADE]
JUDGE

YSK/