

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6508 OF 2017

- 1] Indubai Namdeo Wagh,
Age : 60 years, Occu. : Household,
R/o : 57, Khemaji Ajabe Nagar,
Near Jain Temple.
Sakri Road, Dhule, District Dhule.
- 2] Prashant Namdeo Wagh,
Age : 40 years, Occu. : Govt. Contractor,
R/o : 57, Khemaji Ajabe Nagar,
Near Jain Temple.
Sakri Road, Dhule, District Dhule.
- 3] Deepmala Prashant Wagh,
Age : 35 years, Occu. : Household,
R/o : 57, Khemaji Ajabe Nagar,
Near Jain Temple.
Sakri Road, Dhule, District Dhule.
- 4] Sau. Sunita Ravindra Shirsath,
Age : 43 years, Occu. : Household,
R/o : 137, Karuna Vihar Society,
Khemaji Ajabe Nagar, Behind
Vidyavardhini College, Sakri Road,
Dhule, Dist. Dhule.
- 5] Ravindra Sukha Shirsath,
Age : 43 years, Occu. : Household,
R/o : 137, Karuna Vihar Society,

Khemaji Ajabe Nagar, Behind
Vidyavardhini College, Sakri Road,
Dhule, Dist. Dhule.

6] Kiran Dada Dhivare,
Age : 24 years, Occu. : Household,
R/o Bhimnagar, Dhule, Dist. Dhule. ...Applicants

Versus

1] The State of Maharashtra
Through the Police Inspector,
Dhule Taluka Police Station,
Dhule, Dist. Dhule.

2] Yatin Manikrao Jadhav,
Age : 29 years, Occu. : Service,
R/o 65/Bhaishri Nagar,
Shashkiya Dudh Dairy Road,
Mill Parisar, Dhule,
Dist. Dhule. ...Respondents

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Mr. M. S. Sonawane, Advocate for Applicants.
Ms. V. S. Choudhari, A. P. P. for Respondent Nos. 1-State.
Mr. M. M. Choudhari, Advocate (appointed) for Respondent
No. 2.

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CORAM : **T. V. NALAWADE &**
SMT. VIBHA KANKANWADI, JJ.
DATE : **26-9-2018.**

JUDGMENT : (Per Smt. Vibha Kankanwadi, J)

01. Present application has been filed by the original accused persons by invoking powers of this Court under Section 482 of Cr. P. C. in order to quash the F. I. R. vide C. R. 234 of 2016 registered with Dhule Taluka Police Station, Dist. Dhule for the offences punishable under Sections 397, 441 of I. P. C.

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

03. Respondent No. 3 original informant lodged a report on 17.8.2016 stating that he is a contractor who takes contracts of electric fitting and construction. He resides with his mother, brother and sister. He had undertaken a contract of barred wire fencing in the agricultural land gut No. 18 near Jawahar Sut Girani in Morane Shivar belonging to one Pratap Bhagwan Mahale. His workers were working since 10 AM of 16.8.2016. He was also present there. The land owner Sandip Pratap Mahale had come to inspect the work in his car with his driver Yogesh Shelke. They were sitting on chairs behind Anandai Devi Temple in the field around 2 PM. At that time, all the applicants came on motor cycle and asked informant as to how he is erecting a compound fencing and who has given

work to him. He told that it has been given by Sandip Mahale and they should ask anything they want to, to Sandip. Those persons were not in a mood to listen and started man-handling and abusing those persons. One Kiran Dhivare i.e. applicant No. 6 assaulted him on his left wrist by wooden stick. All the lady members also started assaulting by fist blows. Somebody had taken out gold chain from his neck weighing 1 tola and 1 tola gold ring from his right hand middle finger. So also the cash amount of Rs. 3,500/- was taken out forcibly from the pocket of his shirt. After assaulting these persons and abusing them, the accused persons fled on motor cycle. Sandip Mahale took the informant to Civil Hospital. He had sustained fracture to his left hand. Some renowned persons intervened and therefore, he gave it in writing to the Police that he does not want to give any kind of complaint. However, he thereafter thought that those persons in future may harass him and therefore, went to Police Station on 17.8.2016 and lodged the report.

04. The applicants have contended that said F. I. R. is based on the concocted story. It is stated that they came to know about the erection of compound and therefore, requested Sandip Mahale and Amit Mahale to remove the compound on 15.8.2016. However, again compound work was

started on 16.8.2016. Again they had asked those persons to stop the work. However, in the evening, the applicant No. 2 had received a phone call from one Manoj Parerao. Said Manoj Parerao abused and threatened applicant No. 2 that they should not stop the work of compound wall, otherwise, they would be killed. Applicant No. 2 wanted to lodge the complaint, however, the said Manoj Parerao with Sandip Pratap Mahale, Amit Pratap Mahale, Bhaiyya Bhamare, Kiran Mohite, Kiran Thorat and other four to five persons came to the house of the applicant No. 2 on motorcycles and in four wheeler vehicle and they have abused to him and gave threat to life and caused damage to the goods in his house and therefore, he had lodged F. I. R. vide C. R. No. 179 of 2016 for the offences punishable under Sections 395, 452, 427, 504 and 506 of I. P. C. against those persons. On the next day morning around 11.30 to 12.00 it was found that the respondent No. 2 and other persons were trying to erect the compound fencing and therefore, the applicant No. 2 had again requested him not to carry on with the work. At that time also Sandip Mahale and Amit Mahale had assaulted applicant No. 2 and abused him in the name of caste. Respondent No. 2 had taken away 5 gram gold ring of applicant No. 2 and cash of Rs. 5,000/-. When he tried to lodge the report, he was

pacified by the senior members in the locality. Respondent No. 2 was in apprehension that applicant No. 2 would lodge F. I. R. regarding the said incident and therefore, before applicant No. 2 could lodge any report he has lodged the F. I. R. on the basis of concocted story. By way of amendment, it has been contended that the charge-sheet does not attract the ingredients of any of the offence. The real incident has been suppressed. Therefore, they prayed for the quashment of the F. I. R. as well as by way of amendment it is added that the charge-sheet filed before learned J. M. F. C., Court No. 3, Dhule be quashed and set aside.

05. Heard Mr. M. S. Sonawane, Advocate for Applicants, Ms. V. S. Choudhari, A. P. P. for Respondent Nos. 1-State and Mr. M. M. Choudhari, Advocate (appointed) for Respondent No. 2. Perused the charge-sheet. All the learned Advocates have submitted their arguments in support of their respective contentions.

06. It appears that applicant No. 2 had lodged the report regarding incident dated 16.8.2016 around 2.15 AM on 17.8.2016. That was first in time and it was against Manoj Parerao, Sandip Pratap Mahale, Amit Pratap Mahale, Bhaiyya Bhamare, Kiran Mohite, Kiran Thorat, Rawal, Prakash Ahir and others. Respondent NO. 2 was not

involved in that case. Further, it appears that the dispute was in respect of erection of the compound fencing. When this Court expressed that the Court is not inclined to grant any kind relief to the applicant No. 2, 5 and 6, the learned Advocate for the applicant prayed for withdrawal of the application as against them and therefore, disposed of as withdrawn. The application was considered to the extent of applicant No. 1, 3 and 4 i.e. the lady members. As regards the role attributed to the lady members in F. I. R. is that they had assaulted the informant by fists and kick blows. When in fact male members were present, it is less likely that applicant No. 1 who is aged 60 would have indulged in such activity. It also appears that when mere F. I. R. was lodged by applicant No. 2 on 17.8.2016 for the offence punishable under Section 395, 441 of I. P. C. and Section 4(1)(r)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 7(1)(3) of Protection of Civil Rights Act. Both these FIRs are prior in time with the F. I. R. lodged by respondent No. 2. Respondent No. 2 himself in his F. I. R. says that on the day of incident he had given it in writing to the Police that he is not desirous of lodging any report. He says that it was due to the intervention of the respectable persons. He then

says that if at all anything is done by the applicants in future, in order to safeguard his interest he has lodged the report. With this background, the alleged involvement of the lady members is required to be seen. No doubt, the witnesses have given the names of applicant Nos. 1, 3 and 4, yet, it is stated that those lady members acted simultaneously and gave kick blows to the informant. The evidence that has been collected against the present applicant Nos. 1, 3 and 4 is scanty and it appears that it is on the background of the report lodged against Sandip Mahale, whose contract was taken by the informant. It would be a futile exercise to make applicant Nos. 1, 3 and 4 to face the trial. Case is made out to invoke the inherent powers of this Court under Section 482 of Cr. P. C. as per the guidelines given in **State of Haryana and Ors. V/s Bhajanlal and Ors., [1992 Supplement -1 Supreme Court Cases, 335]**.

07. Hence, following order;

ORDER

(i)The application is partly allowed.

(ii)Relief is granted in prayer Clause "B-1" to the extent of applicant Nos. 1, 3 and 4 i.e. Indubai Namdeo Wagh, Deepmala Prashant Wagh

and Sau. Sunita Ravindra Shirsath
respectively.

(iii)The applicant in respect of applicant Nos.
2, 5 and 6 stands disposed of as withdrawn.

(iv)Rule made absolute in favour of applicant
Nos. 1, 3 and 4 in above terms.

(v)The fees of the appointed Advocate is
quantified at Rs. 3,000/- to be paid by High
Court Legal Services Authority Sub-Committee
Aurangabad.

[SMT. VIBHA KANKANWADI]

[T. V. NALAWADE]

JUDGE

JUDGE

Dahibhate/-.