

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

CRIMINAL APPLICATION NO.115 OF 2019

1. Kishor S/o Chhagan Ghatе,
Age 33 years, Occu. Police Patil,
2. Savitabai W/o Shivaji Ghatе,
Age 33 years, Occu. Household,
3. Navnath S/o Chhagan Ghatе,
Age 36 years, Occu. Service,
4. Shivaji S/o Chhagan Ghatе,
Age 43 years, Occu. Service,

All R/o Waghadi, Tq. Paithan,
District Aurangabad.

... **Applicants**

Versus

1. The State of Maharashtra,
Through Police Station Paithan,
District Aurangabad.
2. Sindhubai Dadasaheb Kamble,
Age 40 years, Occu. Labour,
R/o Waghadi, Tq. Paithan,
District Aurangabad.

... **Respondents**

...

Mr. S.J.Salunke, Advocate for Applicants.
Mr. S.B.Yawalkar, APP for Respondent-State.
Mr. A.R.Kawade, Advocate for Respondent No.2.

...

**CORAM : T.V.NALAWADE AND
MANGESH S. PATIL, JJ.**

DATE : 08.04.2019

JUDGMENT : (Per Mangesh S. Patil, J.) :-

Heard. Rule. The Rule is made returnable forthwith. The learned APP waives service for the Respondent-State. The learned advocate Mr. A.R.Kawade waives service for Respondent No.2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The applicants are seeking quashment of Crime No.304 of 2018 registered with Paithan Police Station, District Aurangabad for the offences punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Section 3(1)(r) and (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as 'SCST Act') and the charge-sheet filed consequent thereto.

3. Respondent No.2 lodged the FIR on 16.10.2018 alleging that on 11.10.2018 when she along with her daughter was cleaning a plot from *Gairan* land, Gut No.62 which was allotted to her by the State Government under a housing scheme at village Waghadi, at about 1.00 p.m.

applicant Nos.1 and 2 arrived there and asked her as to why she was spreading sticks on their land. She retorted by saying that she was laying sticks in her place and not on their place. They abused her in filthy language knowing well that she belonged to a scheduled caste. Applicant No.2 brought her to the ground by holding her hair and kicked and gave fists blows to her. Applicant No.1 also assaulted him with wooden stick on the thighs and near left eye. She became unconscious. Her daughter who was accompanying her rushed home. Her father and brother then arrived at the spot and she was taken home and from there to a Police Station. She was referred to the Government Hospital at Paithan. Her thumb impression was obtained by police and she was sent home.

4. She further alleged that in the same night again all the applicants came to her house and questioned her as to why she had lodged complaint with police. They again abused her on caste lines in filthy language and threatened her of dire consequences.

5. The learned advocate for the applicants submits that the FIR has been lodged belatedly and no explanation is coming forth for the delay. In fact already Respondent No.2 had filed a report on the very day of the incident that is on 11.10.2018 and a Non-cognizable case was registered. At no place in this N.C. Report had she alleged about any abuses hurled at her on caste lines. On the contrary, it has been mentioned in that N.C. Report that the applicants had apologized at the Police Station. Even she was paid some money and therefore, she had gone home. If this circumstance is taken note of, there is every room to believe that the FIR has been lodged belatedly after due deliberations.

6. The learned advocate for the applicants would further submit that applicant No.1 is a Police Patil and it was his duty to protect the *Gairan* land. Only a proposal for allotment of a plot to Respondent No.2 was forwarded. There was no allotment of any plot to her. It is merely because he had objected her in occupying a piece of *Gairan* land that a false and concocted FIR has been lodged to wreck vengeance. It would be a sheer misuse of

the process of law if the applicants are allowed to face the charge in such fact situation.

7. The learned APP and the learned advocate for Respondent No.2 submitted that the discrepancies in the N.C. Report and the FIR cannot be gone into at this juncture muchless to draw any inference touching veracity or otherwise of the allegations in the complaint. The FIR clearly makes out all the necessary ingredients for constituting the offences under the IPC as well as under the SCST Act. The offence is serious and the purpose of enacting the SCST Act would be defeated if the prosecution is stalled at the threshold.

8. We have considered the rival submissions and the papers of the investigation. It is a matter of record that the incident alleged to have taken place on 11.10.2018 and the FIR has been lodged on 16.10.2018. Prima facie the FIR does not contain even a vague statement to explain the delay.

9. Pertinently the FIR also does not mention that any attempt was made by Respondent No.2 to lodge the

complaint in the manner alleged in the FIR on the date of the incident but she was not allowed to record it in that manner. It has not been specifically alleged in the FIR that the Non-cognizable Report was got registered by exerting some influence on her.

10. True it is that in a proceeding like this, this Court is not expected to scan the material which is likely to be led in evidence since this is not a trial. However, this Court can certainly look into the material circumstances and all the attending facts and material collected during the course of investigation to ascertain if there is a prima facie material and all the necessary ingredients for constituting offence can easily be discerned on the basis of the FIR and the material collected during the course of the investigation. The law is well settled in catena of cases laying down situations where this Court can quash the proceeding. Those have been laid down by the Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others ; AIR 1992 Supreme Court 604.***

11. It is in this context that it is important to look at the circumstance regarding the delay in lodging the FIR. In our considered view, therefore, absence of any explanation in the FIR firstly regarding its belated lodging and secondly regarding lodging of the Non-cognizable Report sans any allegation touching the offences punishable under the SCST Act, is quiet material and important.

12. In this respect if one examines the statement of the daughter of Respondent No.2 recorded under Section 164 of the Cr.P.C. by a Magistrate, though she has stated about occurrence of the incident, she has conspicuously omitted to state about the applicants having hurled the abuses at her mother on caste lines. She has also not whispered about they having hurled any abuses. She has merely stated that when she along with her mother were cleaning the piece of land applicant Nos.1 and 2 arrived there, applicant No.1 questioned her mother and her mother having retorted by saying that she had not put sticks in his land. He thereafter went back and arrived there with his wife that is applicant No.2 and applicant No.2 then pushed her mother to ground and applicant

No.1 assaulted her mother with a stick. It is thus quiet apparent that she has not at all stated about the applicants having hurled abuses at her mother muchless on caste lines. She has also not stated about they having threatened or intimidated her mother.

13. In this regard it is also important to note that even the statement of Respondent No.2 has been recorded under Section 164 of the Cr.P.C. by a Magistrate. Even in her statement she has not stated about applicant Nos.1 and 2 having abused her muchless on caste lines in the episode which took place in the afternoon in the *Gairan* land. Besides, even she has not stated as to why she had lodged a Non-cognizable Report sans any allegations touching the offences under the SCST Act and as to why she could not lodge the FIR promptly.

14. Coupled with the above state of affairs, it is also a matter of record that it was merely a proposal which was forwarded to the State Government for allotment of a piece of land to Respondent No.2 in a housing scheme but no allotment was made to her of any piece of *Gairan* land.

Taking note of the fact that applicant No.1 is the Police Patil, therefore, there is every room to believe that a belated FIR has been lodged after due deliberations to wreck vengeance only because the applicants had objected Respondent No.2 in occupying a portion of *Gairan* land to which she was not entitled to for the time being.

15. In our considered view, it would be a sheer misuse of the process of law if the applicants are made to face the trial in the afore mentioned facts and circumstances. The case is squarely covered by Category 7 of Bhajan Lal's case (*supra*).

16. The application is allowed.

17. The rule is made absolute in terms of prayer clause 'B'.

(MANGESH S. PATIL, J.)

(T.V.NALAWADE, J.)

...

vmk/-