

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 252 OF 2019

- 1] Datta s/o. Rajaram Madane,
Age 42 years, Occ. Service.
(Assistant Police Inspector) Bharati Vidyapeeth,
Police Station Pune City,
Pune Police Commissionerate Office,
Pune.
- 2] Rajaram s/o. Laxman Madane,
Age 64 years, Occ. Agrilture.
- 3] Rahul s/o. Mahadeo Kaygude,
Age 35 years, Occ. Agri.
- 4] Bhamabai w/o. Rajaram Madane,
Age 60 years, Occ. Agri.

Applicant Nos. 2 to 4 r/o. Ganesh Wadi,
Tq. Karjat, Dist. Ahmednagar.

... Applicants

Vs.

- 1] The State of Maharashtra
through Investigation Officer,
Karjat Police Station, Tq. Karjat,
Dist. Ahmednagar.
- 2] Navnath s/o. Nivrutti Kaygude,
Age 28 years, occ. Agri.
R/o. Ganeshwadi, Tq. Karjat,
Dist. Ahmednagar.

... Respondents

Mr. N.B. Narwade, Advocate for applicants
Mr. A.S. Shinde, APP for respondent No.1.
Mr. V.S. Bedre, Advocate for respondent No.2.

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ**

DATE : 20th June, 2019.

ORAL JUDGMENT : [PER K.K. SONAWANE,J] :-

1. Heard. Rule. Rule is made returnable forthwith. Matter is taken up for finality with the consent of learned counsel for parties.
2. The applicants preferred present application under Section 482 of the Code of Criminal Procedure (“Cr.P.C.”) seeking relief to quash and set aside the First Information Report (“FIR”) bearing No. I-319/2018 registered at Police Station, Karjat Police Station, Dist. Ahmednagar for the offence punishable under Sections 452, 323, 504, 506 read with Section 34 of the Indian Penal Code (“IPC”) as well as the proceeding of RCC No. 35 of 2019 pending before the learned JMFC, Karjat, filed pursuant to the said FIR.
3. The prosecution case in nutshell is that , the first informant - Navnath Kaigude, visited to the police of Karjat P.S., Dist. Ahmednagar and ventilated the grievances that he is resident of Ganesh Wadi, Taluka Karjat and eking livelihood by doing agricultural work. He resides with his wife, children and parents. It has been alleged that there was a dispute on account of Gat No. 172 in between Dada Kaigude, the cousin uncle of the first informant and Mahadeo Kaigude, who was residing at some distance from his house. Dada Kaigude succeeded in the court litigation. It has been alleged that on the day of the

incident, on 2.11.2018, at about 8.30 A.M, when the complainant was in front of his house, that time, the applicant appeared and hurled abuses to the first informant, saying that, why he has not returned the land of his maternal uncle. There was bitter arguments in between the applicant and first informant and in the fight, the applicant started assaulting the first informant. The applicants barged into the house of first informant and rebuked him by assaulting with kicks and fists. In the fight, the applicant Rajaram dealt a blow of wooden log on the first informant, whereas the applicant Rahul attacked the first informant with the cable from his hand. The cousin uncle Dada Kaigude made endeavour to intervene in the fight but he was also attacked by the applicants. The applicant Bhamabai exhorted to eliminate them, if the agricultural land of her brother was not returned to him. After the commotion, the passers-by Shivaji Rama Thombre, Madhukar Malhari Kaigude, Bhagwat Dada Kaigude rushed to the spot and extricated the first informant and his uncle from the clutches of the assailants.

4. Pursuant to FIR, Police of Karjat Police Station registered the crime and set the penal law in motion. Pending the investigation, applicants moved the present application by invoking remedy under Section 482 of the Cr.P.C. for relief to absolve them from the penal proceeding initiated against them. After investigation, the charge sheet bearing No. 35 of 2019 came to be filed against the applicants and same is pending before the learned Magistrate at Karjat. The applicant also prayed to quash and set aside the impugned penal proceeding.

5. Learned counsel for applicants vehemently submits that there are vague and baseless allegations made in the FIR. There was no direct and indirect involvement of applicants into the crime. These persons are roped in this false case without any reasonable cause. According to learned counsel, the allegations made in the FIR are vague and general in nature. It would unjust and improper to compel the applicants to face the agony of trial. In case, the present penal proceeding is not quashed, it would cause serious prejudice and injustice to the applicants. The learned counsel for applicants drawn attention of this court to the fact that applicant Rajaram on 30.10.2018 filed proceeding bearing FIR No. 296 of 2018 under Sections 341,504,506 r/w. 34 against the first informant and others. The matter is pending before the learned trial court. In the alleged incident, the applicant Rajaram suffered serious head injury. He was admitted in the hospital at Pune. There was application to the concerned police for preventive action against the first informant and his accomplices. Therefore, he requested to quash the proceeding.

6. The learned APP as well as learned counsel for respondent No. 2-first informant vociferously opposed the contentions put-forth on behalf of applicants and submit that the allegations of assault nurtured on behalf of complainant in the FIR discloses commission of crime punishable under Sections 452, 323,504,506 r/w. 34 of the IPC. The complainant categorically described the episode of assault at the hands of applicants.

7. Having given anxious consideration to the arguments advanced on behalf of both sides, this Court was not inclined to nod in favour of applicants Nos. 1 to 3 for exercise of inherent powers under Section 482 of Cr.P.C. Eventually, learned counsel for applicants seeks leave to withdraw the proceedings to the extent of applicants Nos. 1 to 3. Accordingly, leave was granted for withdrawal of application to the extent of applicants No. 1 to 3.

8. In so far as the allegation nurtured against applicant No. 4 Bhamabai is concerned, we find that the allegations cast against the applicant No.4 are all vague and general in nature. The only allegation is that she exhorted to eliminate them if the agricultural land of her brother was not returned to her. This exhortation or threatening on the part of applicant No.4 found vague, general and omnibus in nature. There are no specific allegations attributing overt-act of the applicant No.4 in the assault. There were no detail particulars given in the FIR about the participation of the applicants No. 4. There is no impediment to conclude that the present FIR against applicant No.4 would be an abuse of process of law.

9. It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Schindia** reported in **AIR 1988 SC 709** categorically elucidated in paragraph No. 7 as under:

“7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by

the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

10. The Honourable Apex Court in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others** reported in **MANU/SC/0115/1992 : 1991(1) RCR(Cri), 383 (SC)** held that “where the proceedings is instituted with an ulterior motive or were the allegations made in the complaint are absurd and improbable, the Court would be within its power to quash the complaint/FIR”. Moreover, if the allegations in the FIR against the applicants are taken at their face value and accepted the same in its entirety would not constitute any offence or make out case against applicants, in such circumstances, there would not be any propriety to allow the prosecution to proceed further into the matter.

11. In the instant case, it would be unjust and improper to allow the prosecution to proceed against applicant No.4. It would be an futile efforts and would cause injustice to them. It would also dissipate the precious time of

Court of law as the possibility of ultimate conviction is totally bleak. The ends of justice would be served by ensuring that the applicant No.4 may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against these applicant No.4 deserves to be quashed and set aside. Therefore, we proceed to pass following order :

ORDER

1. The Criminal Application is allowed partly.
2. Application in respect of applicants No. 1 to 3 stands dismissed as withdrawn.
3. Application in respect of applicants No. 4 is hereby allowed.
4. The penal proceeding initiated against applicant No.4 bearing FIR No. I-319 of 2018 and the proceeding of RCC No. 35 of 2019, for the offences punishable under Sections 452,323,504, 506 read with Section 34 of IPC registered with Police Station, Karjat is quashed and set aside, to the extent of applicant No.4.
5. Rule is made absolute partly in terms of prayer clause "B-1".
6. Criminal Application is disposed of in above terms.
7. No order as to costs.

[K.K. SONAWANE]
JUDGE.

grt/-

[T. V. NALAWADE]
JUDGE