

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 1146 OF 2019

1. Pandurang S/o. Rangnath Jadhav,
Age : 50 years, Occu. Service,
(Eco Bank Ahmednagar),
2. Manda W/o. Vitthal Jadhav,
Age : 45 years, Occu. Household & Agri.,
3. Bharat S/o. Baburao Jadhav,
Age : 24 years, Occu. Education,

All R/o. Jadhav Mala, Balika Ashram Road,
Ahmednagar, Tq. & Dist. Ahmednagar.

... **APPLICANTS**
(Orig. Accused)

VERSUS

1. The State of Maharashtra,
Through Investigating Officer,
Tofkhana Police Station, Ahmednagar,
Tq. & Dist. Ahmednagar.
2. Akshay S/o. Rajendra Jadhav,
Age : 25 years, Occ. Agri.,
R/o. Jadhav Mala, Balika Ashram Road,
Near Laxmi Mata Mandir, Ahmednagar.

... **RESPONDENTS**

...
Mr. N. B. Narwade, Advocate for Applicants.

Mr. A. S. Shinde, APP for Respondent No.1 / State.

Mr. Satej Jadhav, Advocate for Respondent No.2.

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

DATE : 20th June, 2019.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR No.I-85 of 2018, registered with Tofkhana Police Station, District Ahmednagar, for the offences punishable under Sections 326, 324, 504, 506, 143, 147, 148 and 149 of the Indian Penal Code and some Sections of Maharashtra Police Act.

3 The crime is registered on the basis of report given by Respondent, Akshay Jadhav. The Applicants are relatives of the first informant. The incident in question took place on 9th February, 2018 at about 06:30 am. According to the first informant, he and his uncle Adinath Jadhav were on morning walk and when there were near *Dhor Wasti*, present Applicants and four other persons intercepted

them and they picked up quarrel. Allegations are made that when the first informant and his uncle tried to convince the assailants not to quarrel and the dispute can be settled, the assailants started assaulting them. Allegations are made that assailants Yogesh, Nandkishor and Vitthal assaulted the first informant by using wooden log on head, chest and legs and he sustained injuries. Allegations are made that Adinath was assaulted by Akshay Jadhav by using cement block on his head. It is contended that while leaving the spot, the assailants threatened them to finish them if in future dispute was created by them. In respect of incident dated 9th February, 2019, report was given on 11th February, 2018 and the crime was registered.

4 The learned counsel for Applicants submitted that the first informant is a *Gunda* by nature. One post of Akshay Jadhav posted on *WhatsApp* is produced showing that he was ready to finish anybody and for that he was ready to face the consequences. The submissions were made that one proceeding was started in the past for externment of Akshay Jadhav, but on that occasion, in the year 2017, a bond was obtained from him of good behaviour and he was spared. A copy of said order is produced on record.

5 It was submitted for Applicant Nos.1 and 3 that they were not present on the spot and no active role is attributed to them in the assault. It was submitted that the allegations as against Applicant No.2 (Manda) are very vague in nature and it does not look probable that with the male persons the lady had gone to the spot early in the morning for assaulting the first informant and his uncle.

6 Papers of investigation were produced and they show that Akshay sustained two fracture injuries. They were sustained on head and there was also injury to the chest of contusion. Adinath sustained four CLWs and all of them are described as grievous injuries. The weapon used could not be ascertained by the medical officer.

7 The learned APP submitted that seven persons were involved in the assault and so the provision of Section 149 of the Indian Penal Code can be used and due to that it is not open to say that specific role of Applicants is not mentioned by the injured witnesses.

8 Admittedly, there was some dispute between these two groups, who are relatives of each other. If the incident had taken place at 06:30 am away from the residential place, it does not look probable that the lady aged 45 years (Applicant No.2) had gone there with male persons to intercept the first informant and his uncle, who were on morning walk and then to assault them. Further, no specific role is attributed to Manda. The police papers do not show that other witnesses had also seen Manda playing active role in the incident. Allegations made against her are vague and it is alleged that all the seven persons were quarreling with the first informant and his uncle. In view of the nature of allegations made against Manda, this Court holds that nothing can be achieved by asking Manda to face the trial for the aforesaid offences. Lady member does not ordinarily become part of such unlawful assembly in such family dispute, which takes place away from the residential place. Even if she was present, it is open to hold that she was a spectator. However, the same cannot be said in respect of Applicant No.1 (Pandurang) and Applicant No.3 (Bharat). When this Court expressed that this Court is not inclined to grant relief to Applicant Nos.1 and 3 (Pandurang and Bharat), the learned counsel for these Applicants, on instructions, submitted that

he wants to withdraw the proceeding of these two Applicants. In the result, the following order is passed:

ORDER

- I. The application of Applicant No.1 (Pandurang Jadhav) and Applicant No.3 (Bharat Jadhav) is disposed of as withdrawn.
- II. The application of Applicant No.2 (Manda W/o. Vitthal Jadhav) is allowed. Relief is granted to Applicant No.2 (Manda W/o. Vitthal Jadhav) in terms of prayer clause (B).
- III. Rule is made absolute in those terms.

[K. K. SONAWANE, J.]

[T. V. NALAWADE, J.]

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