

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1904 OF 2019

1. Anil Fakirchand Dhotre,
Age 39 years, Occu. Agriculture,
2. Delip Fakirchand Dhotre,
Age 35 years, Occu. Agriculture,
3. Fakirchand Vishvanath Dhotre,
Age 71 years, Occu. Agriculture,
4. Uddhav Eknath Dhotre,
Age 36 years, Occu. Agriculture,
5. Kishor Yedu Dhotre,
Age 35 years, Occu. Agriculture,
6. Kadu Vishvanath Dhotre,
Age 68 years, Occu. Agriculture,
7. Sudam Karbhari Dhotre,
Age 45 years, Occu. Agriculture,
8. Raju Kadu Dhotre,
Age 48 years, Occu. Agriculture,
9. Sandip Kadu Dhotre,
Age 35 years, Occu. Agriculture,
10. Eknath Karbhari Dhotre,
Age 58 years, Occu. Agriculture,
All above R/o. Katepimpalgaon,
Taluka Gangapur, Dist. Aurangabad.
11. Shubham Dange,
Age 19 years, Occu. Student,
R/o. Shivrai, Taluka Vaijapur,
District Aurangabad.

....Applicants.

Versus

1. State of Maharashtra,
Through Shillegaon Police Station,

Taluka Gangapur, Dist. Aurangabad.

2. Kailas Eknath Dhotre,
Age 45 years, Occu. Agriculture,
R/o. Katepimpalgaon,
Tal. Gangapur, Dist. Aurangabad.

....Respondents.

Mr. Y.H. Jadhav, Advocate for applicants.

Mrs. V.N. Patil (Jadhav), APP for respondent No. 1/State.

Mr. J.V. Deshpande and Mr. S.N. Dudhate, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
N.B. SURYAWANSHI, JJ.**

DATED : 02/12/2019.

JUDGMENT : [PER T.V. NALAWADE, J.]

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

2) Present proceeding is filed for relief of quashing of F.I.R. No. 278/2018 registered with Shillegaon Police Station, Tahsil Gangapur, District Aurangabad for the offences punishable under sections 307, 147, 148, 323, 149 etc. of Indian Penal Code. The crime is registered on the basis of report given by respondent No. 2 Kailas Dhotre.

3) In the F.I.R. given on 27.10.2018 Kailas has made allegations that in incident dated 26.10.2018 when he rushed towards his flat from the side of garage of Dinesh Dhotre, he noticed

that quarrel was going on between his wife Alkabai on one side and present applicants on the other side. According to him, his son Bablu had also rushed to the spot. According to him, when he went ahead, he noticed that applicant Anil Dhotre took out a bottle of poison from pocket of his clothes, applicant Fakirchand held Alkabai and then Anil forcibly poured the poison in to the mouth of Alkabai. He has contended that within no time, other applicants also rushed there and they assaulted him and his son Bablu. He has made allegations that during incident Anil Dhotre forcibly administered poison to him also, but he somehow did not allow it to enter inside and he threw it out by spitting. He has made allegations that the accused persons then threw away household articles and during that incident, he lost the amount of Rs.50,000/- and some gold ornaments like Zumber, Ekdani etc. According to him, he and his wife were shifted to Devgiri Hospital for treatment and they were saved.

4) The contentions made by the informant show that there was dispute going on between the family of the informant and the applicants over the right of use of footway of the applicants. It is contended that due to that dispute the offence was committed by the applicants.

5) Criminal Application No. 655/2019 was filed by Kailas Dhotre, his son and others for relief of quashing of F.I.R No. 280/2018

registered in the same police station for offences punishable under section 306, 506 and 34 of I.P.C. The F.I.R. of that crime was given by Ashok Karbhari Dhotre. Pavan, son of Ashok had committed suicide by hanging on 29.10.2018. In the F.I.R., allegation is made that Pavan was required to take such step as false report was given against him like C.R. No. 278/2018. While deciding that application, this Court had occasion to see the record of both the crimes. This Court did not grant relief to Kailas and his son Bablu, but granted relief to the other persons who were not members of the family of Kailas and who had not made allegations of administration of poison to Kailas and his wife in C.R. No. 278/2018.

6) This Court has carefully seen the record of investigation of C.R. Nos. 278/2018 and 280/2018. There is record of admission of Kailas and his wife in hospital and the record shows that history of consumption of poison was given and history of assault or administration of poison was not given. They were shifted to the hospital along with bottle of poison and it is clear that as the bottle bearing name of 'Bayer Planofix' was available, proper treatment was given. Statements of witnesses recorded in C.R. No. 280/2018 and the circumstances of the present matter show that there used to be quarrels between Kailas and his wife Alkabai. As it was informed to hospital that they had consumed poison and there is clear probability that only due to some dispute with the present applicants

allegations came to be made against them, that too after two days of the incident. No injury as such was found on the person of Kailas and his wife. It does not look probable that they did not resist if somebody was attempting to administer the poison to them. Thus, the story given is highly probable in nature and there are aforesaid circumstances. This Court holds that it will be abuse of process of law, if the applicants are made to face the trial for aforesaid offences. In the result, the application is allowed. Relief is granted in terms of prayer clause 'B'.

Rule is made absolute in those terms.

[N.B. SURYAWANSHI, J.]

[T.V. NALAWADE, J.]

ssc/