

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3121 OF 2018

1. Raghunath Udelal Mahale,
Age 68 yrs, Occ. Nil,
R/o. A/p. Chaugaon,
Taluka and Dist. Dhule.
2. Uttam Udelal Mahale
Age 54 years, Occ. Service,
R/o. A/p. Chaugaon,
Tal. And Dist. Dhule.
3. Rohini Uttam Mahale
Age 53 years, Occ. Service,
R/o. A/p. Chaugaon,
Tal and Dist. Dhule.
4. Bhagesh Uttam Mahale
Age 22 years Occ. Student,
R/o. A/p. Chaugaon,
Tal. And Dist. Dhule.

.. APPLICANTS.

VERSUS

1. The State of Maharashtra
through Police Station Officer,
Dhule Taluka Police Station, Dhule.
2. Lalita Somnath Mahale
Age 30 years, Occ. Household & Agriculture,
R/o. Chaugaon,
Tal and Dist. Dhule.

.. RESPONDENTS.

Mr. A.S. Kale h/f. Talekar & Associates for applicants.
Mr. V.S. Chaudhari, APP for respondent No.1.
Mr. H.F. Pawar, h/f. Advocate V.P. Raje, for respondent No.2.

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ
DATE : 14th 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 Crime No.229/2018 registered at Dhule Taluka Police Station, for the offence punishable under Sections 442, 323, 504, 506, 427 r/w. 34 of the Indian Penal Code (“IPC”); as well as the proceeding of Charge Sheet bearing No. 268 of 2018 filed pursuant to the investigation of the aforesaid crime.

3. It is the case of the prosecution that the first informant Sau. Lalita Mahale on 31.7.2018, approached to the police of Dhule Taluka Police Station and filed report that the applicants are her distant relatives and residing in the same village Chaugaon, Taluka and District Dhule. There were strain relations in between the family of the first informant and the applicants on account of dispute of pathway from the Bandh of agricultural land. It has been contended that the agricultural land of the first informant was located adjoining to the land of the applicants and on account of Bandh, there were frequent quarrels in

between the family of the first informant and the accused. It has been alleged that prior to 5-6 months of the incident, the applicant Raghunath allowed his buffaloes for grazing in the land of the first informant and caused damage to the onion crop. There was altercation in between the first informant and the applicants, which resulted into filing a criminal complaint to the police and the matter is pending before the learned Magistrate at Dhule. According to first informant, the applicants on one or the other pretext used to pick up quarrels with the family members of first informant, but, being adjoining land owners, the family members of the first informant did not pay any attention to the quarrelsome conduct of the applicants. The first informant further alleged that on 29.7.2018, her husband had gone out of station. She was doing the agricultural operation in her land. At that time, the applicant Raghunath and other applicants were also doing agricultural work in their land. At about 4.30 to 5.00 p.m. when the first informant was busy in agricultural operation, that time, the applicant Uttam suddenly appeared on the back side of the first informant and he caught hold to her. The first informant became frightened and yelled for help. She pushed the applicant Uttam back. On hearing shouts of the first informant, the other applicants also rushed to the scene of occurrence. The applicant Raghunath exhorted to kill the first informant as she was not ready to withdraw the proceeding filed in the court. The other applicants started jostling the first informant and hurled abuses. The applicant – Raghunath assaulted the first informant with stick and uttered filthy words by pulling her saree. The applicant Bhagesh attempted to outrage the modesty of

the first informant by pressing her breast. They all gave threats of life to the first informant. Meanwhile, the adjoining land owners intervened in the scuffle and they extricated the first informant from the clutches of the applicant. It has been alleged that the clothes of the first informant were torn in the fight. The bangles and chain beads from her neck were broken on the spot. Thereafter, the first informant visited to the concerned police and filed the report. Pursuant to the report, the police of Dhule Taluka P.S. registered the crime and set the penal law in motion.

4] Pending investigation, the applicant preferred the present application by invoking the remedy under Section 482 of Cr.P.C. to quash and set aside the criminal proceeding filed against them. Meanwhile, the I.O. recorded statements of the witnesses acquainted with the facts of the case. He collected the relevant document and after completion of investigation, the I.O. filed charge sheet against the applicants, which is pending before the learned Magistrate at Dhule. The applicants also prayed to quash and set aside the proceeding of charge sheet filed against them pursuant to the FIR bearing No. 268 of 2018.

5] The learned counsel for the applicant vehemently submits that the entire FIR is false, fabricated and not genuine one. The first informant attempted to embroil the applicants by making false allegations in this case. The applicants are innocent of the charges pitted against them and they have not committed any crime. The learned counsel for the applicants drawn

attention of this court towards the documents of civil proceeding produced on record. It has been contended that the family members of the first informant attempted to make demand of right of way from the Bandh of the agricultural land of the applicants by claiming easementary right. There was a dispute in between the two families on account of path way claimed by the family members of the informant for going to their land. They had also initiated proceeding under Section 143 of the Maharashtra Land Revenue Code for a right of way. The Tahsildar, Dhule rejected the application of the husband of first informant for claiming the right of way from the agricultural land of the applicants. The revision was also preferred by the husband of first informant under Section 257 of the Maharashtra Land Revenue Code. It was also turned down by the concerned Sub Divisional Magistrate, Dhule. Taking umbrage of the failure in the revenue proceeding, the family members of first informant used to pick up quarrels with the applicants frequently. The applicant Uttam Mahale also filed an application to the concerned police for preventive action against the family members of the applicants. Despite the same, the applicants, in the month of February 2018, filed a false private complaint against the applicants for the allegation of assault and intimidation etc. The matter is pending before the learned Magistrate at Dhule. According to learned counsel, the applicant No.4 is the student and one of the aspirants of Civil Services Examination. At the relevant time, he was studying at Unique Academy Pune. He was not present at the scene of occurrence as alleged by the first informant. The applicant No.2 was also at the relevant time I.e on 29.7.2018. busy in the

meeting convened by the management of the school. He produced the Attendance Certificate on record. According to learned counsel, the present proceeding is totally false, baseless and fabricated one. It is nothing but an abuse of process of law. Therefore, the criminal proceedings initiated against the applicant is required to be quashed and set aside.

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 on behalf of complainant in the FIR discloses commission of crime punishable under Sections 354A, 427, 447, 323, 504, 506 r/w. 34 of the IPC. The complainant categorically described the episode of outraging her modesty and assault on her. There are concrete allegations of assault and outraging modesty by the applicants.

7] We have given anxious consideration to the submissions advanced on behalf of both sides. We have also perused the document produced on record. Admittedly, the relations between the family members of the first informant are strain and not cordial one. There was a dispute on account of path way from the Bandh of the agricultural land of applicants. The documents produced on record show that the husband of first informant filed proceeding before the revenue authority for claiming the easementary right of way for ingress and egress to his land from the Bandh of agricultural land of applicants. He did not succeed in the proceeding. There was also attempt to

file criminal complaint against the applicants for charges of assault, indimidation etc. The document of Attendance Certificate produced on record on behalf of applicant No.2 about his presence in the meeting convened by the Management of the school on the day of incident, created doubt about the veracity and truthfulness of the allegations nurtured against the applicants by the first informant. It is also a fact that the applicant No.4 was pursuing his studies for Civil Services Examination in the coaching class at Pune. His attendance in the coaching class at Pune also devastated the gravity of the allegation. The first informant cast allegations about molestation against applicant No.4 Bhagyesh whose presence at the scene of occurrence found improbable and unbelievable. In view of inimical terms in between the two families, it appears that the present complaint came to be filed with an ulterior motive to harass the applicants. There is no propriety to allow the prosecution to continue against present applicants, in which the ultimate probability of conviction is totally bleak.

8] It is worth to mention that the Honourable Apex Court in the case of **Madhavrao Jiwaji Rao Schindia AIR 1988 SC 709** above 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.”

9] 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.

9] In the instant case, the attending circumstances demonstrate that the present proceeding is nothing but an abuse of process of law. It is not just and proper to compel the applicants to unnecessarily face the agony of trial. In view of inimical terms in between the two families, it appears that the present complaint came to be filed with an ulterior motive to harass the applicants. If the applicants are compelled to face the trial, 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 applicants may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against these applicants deserves to be quashed and set aside. Therefore, we proceed to pass following order :

:-ORDER:-

- 1] The criminal application stands allowed.
- 2] Relief is granted in terms of prayer clause (A) and (D). Crime No. 229 of 2018 filed against the applicants for the offence punishable under Sections 354-A, 427, 447, 323, 504, 506 r/w. 34 of IPC at Dhule Taluka Police Station is quashed and set aside. The Charge sheet No. 268 of 2018 filed before the JMFC, Dhule filed pursuant to the aforesaid crime is also quashed and set aside to the extent of present applicants.
- 3] Rule made absolute in those terms.

[K.K. SONAWANE]
JUDGE.

[T. V. NALAWADE]
JUDGE

grt/-