

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

CRIMINAL APPLICATION NO. 3456 OF 2018

Deepak s/o Madhukar Dehadray,
Age : 42 yrs, Occu: Business,
R/o. : Bramhan Galli, Shevgaon,
Tq. Shevgaon Dist. Ahmednagar

... Applicant

Vs.

1. The State of Maharashtra,
Through Police Inspector,
Bhingar Camp Police Station,
Ahmednagar.

2. Vishal s/o Vijaykumar Baldawa,
Age : 27 yrs., Occu.: Business,
R/o.: Shevgaon Tq. Shevgaon,
Dist. Ahmednagar.

... Respondents

...

Adv. for the Applicant : Mr. S. V. Natu
APP for the Respondent No. 1 : Mrs. V. N. Patil Jadhav
Adv. for Respondent No. 2 : Mr. N. S. Jayu.

...

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ
DATE : 18TH JUNE, 2019.**

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

Heard. Rule made returnable forthwith and matter is taken up for finality with the consent of learned counsel for both sides.

2] The applicant preferred the present application invoking remedy under Section 482 of Cr.P.C. to get quash and set aside the criminal proceeding bearing Crime No. I-279/2017 registered under

Section 326 of IPC with Bhingar Camp Police Station, Ahmednagar.

The applicant is one of the accused arraigned in the aforesaid crime.

3] Factual matrix of the matter in brief is that, the complainant Vishal and Vijay Kumar Baldava, on 23.12.2017 approached to the police of Bhingar Camp Police Station, Ahmednagar and filed the report that his father Vijaykumar Baldava on 22.12.2017, had been to the District Supply Office, Ahmednagar for some errand and while returning home, he came to bus-stop near the State Bank square. It has been alleged that when he was attempting to get on the stair case of the ST bus for boarding, that time, two unknown assailants attacked on his both legs with iron rod and caused serious injuries. Thereafter, assailants made their escape good from the spot. The father of complainant was admitted in the Civil Hospital, Ahmednagar for medical treatment. The police of Bhingar Camp Police Station, recorded his statement and registered the N.C. bearing No. 945 of 2017 under Section 323 of IPC. It has been alleged that there was fracture injury of the shin bone right leg of his father. The complainant suspected about the foul play on the part of applicant - Deepak Dehadray, as he had given threats of life to his father prior to two days of the alleged incident. Pursuant to aforesaid complaint of the first informant, the police registered the Crime No. 279 of 2017 against the present applicant and two unknown assailants for the offence punishable

under Section 326 of IPC and swung into action. I.O. recorded statements of witnesses acquainted with the facts of the case. I.O. obtained injury certificate etc. Despite efforts, the I.O. could not trace out whereabouts of other two unknown assailants. The investigation is in progress.

4] We have given anxious consideration to the arguments advanced on behalf of both sides. The learned counsel for respondent No.2 first informant, strenuously urged that there was an money dispute in between father of the complainant i.e. injured Vijaykumar Baldawa and the applicant - Deepak Dehadray. The persons Prakash Kulkarni, Shyamsundar Dhoot also had an inimical terms with his father on account of commercial transaction. The trio hatched the criminal conspiracy and attacked the injured Vijaykumar Baldawa and inflicted fatal fracture injuries to his limbs. The police did not investigate the matter in proper manner.

5] It is true that there was an fracture injury as well as contused lacerated wound sustained to Vijay Kumar, on his limbs. He was hospitalized for medical treatment. The history of the assault at SBI Chowk Ahmednagar was recorded by the concerned Medical Expert of Shreedeeep Hospital Ahmednagar. Unfortunately, there was no eye witnesses to the alleged incident of assault nor the injured himself received an opportunity to see the assailants. In such circumstances, it would be an hazardous task for the injured to recognize his real assailant.

6] The learned counsel for the respondent – first informant, also expressed inability to point out the incriminating circumstances available on record to facilitate this court to draw prima facie adverse inference against the applicant, for his involvement into the crime. In contrast, the attending circumstances demonstrate that the possibility of accidental injury to the father of first informant can not be ruled out. It is also worth to mention that the present crime came to be registered in the year 2017. The I.O. made endeavour to collect the evidence against applicant and also taken efforts to find out the clue of unknown assailants. But, after assessment of entire evidence collected by I.O. in this matter, prima facie we find it difficult to perceive that prosecution could establish nexus and proximity of the present applicant with the alleged injuries caused to the father of complainant. The allegation made against applicants are totally rests on figment of imagination following their strain relations due to commercial transaction. It is the rule of law that the suspicious circumstances, however strong, cannot take place of proof.

7] Moreover there are no circumstances to blame the I.O. for perfunctory investigation into the matter. In contrast, the I.O. has taken efforts to trace out the real culprits, but did not succeed for lack of incriminating circumstances to find out unknown culprit. There was no recovery of weapon of crime. The complainant also did not provide any clue for positive progress into the investigation.

However, investigation is in progress. Be that as it may, the evidence collected by the I.O. prima facie found totally insufficient to connect the present applicant with the alleged cause of injuries sustained to Vijay Kumar Baldava. It is worth to mention that the allegation made in the FIR or complaint, even if considered at their face value and accepted in their entirety, would not bring the applicant / accused within the ambit of law, prima facie to constitute offence or make out a case against applicant. Therefore, there is no propriety to allow the prosecution to proceed further into the matter for trial of the present applicant for the charges pitted against him. It would be an futile efforts and possibility of conviction into the matter is totally bleak.

8] 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."

7] In the instant case, it would be unjust and improper to allow the prosecution to proceed further against applicant – Deepak Dehadray. It would be an futile efforts and would cause injustice, if the applicant is compelled to face the agony of trial. 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 may not be forced unnecessarily to go on litigations before the Criminal Court. Hence, penal proceeding initiated against the applicant deserves to be quashed and set aside. Therefore, we proceed to pass following order :

O R D E R

1. The Criminal Application is allowed.
2. The Relief is granted in terms of prayer clause (B). The penal proceeding bearing Crime No. I-279/2017 registered u/s 326 of IPC at Bhingar Camp Police Station, Ahmednagar stands set aside and quashed.
3. Rule is made absolute partly in above terms.
4. No order as to costs.

**[K.K. SONAWANE]
JUDGE.**

**[T. V. NALAWADE]
JUDGE**