

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3558 OF 2018

Nikhil S/o Hemraj Patil,
Age : 20 Years, Occ. Education,
R/o. Borkheda Pirache,
Taluka Chalisgaon, Dist. Jalgaon. ..APPLICANT

Versus

- 1] The State of Maharashtra
- 2] Anil S/o Pandit Patil,
Age : 42 Years, Occ. Agriculture,
R/o. Borkheda Pirache,
Taluka Chalisgaon, Dist. Jalgaon ..RESPONDENTS

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Advocate for Applicants : Mr. N.R. Shaikh
APP for Respondent-State: Mr. S. B. Joshi
Advocate for respondent No.2 : Mr. P. N. Nagargoje,
Mr. D. B. Thoke

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CORAM :T.V. NALAWADE AND
SHRI MANGESH S. PATIL,JJ.
DATE : 27th MARCH, 2019.

ORAL 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 for relief of quashing of charge-sheet filed in Crime No.39/2016 registered with Mehunbare Police Station, Chalisgaon, Dist. Jalgaon and also for quashing Regular Criminal Case No. 270/2016 pending in the Court of learned Judicial Magistrate, First

Class, Chalisgaon, Dist. Jalgaon, which is filed for the offence punishable under Sections 325, 143,147,148,149, 427,323, 504 of the Indian Penal Code.

3. Both the sides are heard.

4. The submissions made and record show that there is some land dispute between relatives of the present applicant and the first informant.

4. The incident in question took place on 10.06.2016, at about 9.00 p.m. When the first informant was present near the field of Bhausaheb Balwant Patil, he noticed that there was one JCB machine and one Shubham Patil was on driver seat. When informant asked Shubham as to what he was doing with J.C. B machine, Shubham said that he was following the instructions of owner of JCB namely Devidas Patil. When he questioned Devidas, Devidas replied to him that he did not know anything and only Engineer Sharma can provide the information. When he asked Devidas to give phone number of Engineer, Devidas did not give the phone number and then he called others including the present applicant to the spot of incident. Then thirteen persons came to the spot of incident and they have started abusing to the first informant. In the FIR allegations are made that during the quarrel the persons like

Nilesh Patil, Nagraj Patil, Pankaj Patil held informant and then Bhupendra Patil, Gokul Patil, devidas Patil assaulted him by using wooden log on his right hand, left elbow and other assaulted him by fist blows and kicks. One Kishor Bhagwan Patil tried to intervene in the quarrel to save the first informant but he was also assaulted in the incident. The allegations are made that other witnesses rushed there and they separated the quarrel. Allegations are made that his wife who was sleeping in front of the house, was also assaulted and damage was caused to her gold ornaments. On 11.06.2016, the complaint was lodged in Police Station and on the same day he was medically examined by the police. The injury certificate shows that there were three blunt trauma over wrist, shoulder and back and he had complaint of pain. The doctor noticed undisplaced fracture of first metacarpal of right hand. There are statements of eye witnesses.

5. The learned counsel for the applicant submitted that no specific allegations are there, on the basis of which it can be said that he was member of unlawful assembly if any, which was formed on the spot. He placed reliance on the observations made by the Apex Court in case reported **AIR 2009 SUPREME COURT 1422 (Raj Nath Versus State of Uttar Pradesh)** the observations are as follows :-

' Common object' is different from a ' common intention' as it does not require a prior concert and a common meeting of

minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The 'common object' of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. For determination of the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations."

6. On the other hand the learned A.P.P and learned counsel for the first informant submitted that it will matter of appreciation of evidence and at this stage it cannot be inferred that the present applicant was not member of unlawful assembly. They submitted that he is relative of the persons with whom the first informant has dispute and that circumstances needs to be considered. This Court has gone through the record and record does not show that in addition to the aforesaid vague allegations made against the present applicants, there is other corroboration. The witnesses rushed to the spot when the incident was almost over.

7. Learned counsel of the applicant has produced on record some

documents like admit card, issued by the Indian Army showing that the applicant is selected by Indian Army and he had passed the medical test. He submitted that there is scrutiny of the record and due to present crime he may not get through the rough the scrutiny.

8. In view of the aforesaid circumstances, this Court holds that the relief needs to be granted. In the result following order :-

ORDER

1. The application is allowed.
2. Relief is granted to the applicant in terms of prayer clause 'A'.
3. Rule made absolute in those terms.

These observations are only in respect of present applicant.

[MANGESH S. PATIL]
JUDGE

[T.V. NALAWADE]
JUDGE

YSK/