

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.718 OF 2019

Anandrao Gangarao Gedam and another .Vs. State of Maharashtra, PSO,
P.S.Armori, Tq. Armori, Dist. Gadchiroli.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr. Anil Mardikar, Senior Advocate with Mr.M.PKhajanchi,
Advocate for applicants.

Mr. S.M. Ghodeswar, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : NOVEMBER 05, 2019

1. This application shows how applicant no.1 who was contesting election as a candidate of a political party tries to silence the voice of a competitor who wishes to contest the election as an independent candidate so that he would not be able to contest election by indulging into such acts which are against law and thereby tried to pollute the sacrosanct process of election for electing representative of people from Armori Constituency of Gadchiroli District of Maharashtra State.

2. Heard Mr. Anil Mardikar, the learned Senior Advocate for the applicants and Mr. S.M.Ghodeswar, learned Additional Public Prosecutor for the non applicant-State. Also perused the reply filed on behalf of the prosecuting agency.

3. In recently concluded elections for Legislative Assembly of State of Maharashtra, it is an admitted position that applicant no.1 Anandrao Gedam and complainant Badhuji Tadam filled their respective nomination papers for the Constituency No.67 - Armori of District Gadchiroli.

4. The complainant lodged his report with the Police Station, Armori on 10.10.2019. His report was registered as Crime No.258/2019 for an offence punishable under Sections 171-C, 143, 147, 149, 323, 341, 342, 363, 392, 506 of the Indian Penal Code and under Sections 37 (1) and 135 of the Maharashtra Police Act and under Section 123 of the Representation of People Act, 1951.

5. The submission of the learned Senior Counsel for the applicant is that now election is over and both applicant no.1 and the complainant have lost election and therefore, the custodial presence of the applicants is not necessary. It is also his submission that the first information report is clearly smacked with political agenda. He submits that nothing is to be recovered from the present applicants and therefore, the application can be considered favourably.

6. The aforesaid submissions of the learned Senior Counsel for the applicants have to be examined in the light of the report lodged by Baghuji, the complainant.

7. On 09.10.2019, the complainant along with his companions Ashok Usendi and Charandas was proceeding to village Vairagad at 10:30 in the night on motorcycle. They took a halt at Dongar Tamasi and from there he made a phone call to one Vinod Bavankar, resident of Vairagad that he will not be able to visit the said place and thereafter started returning to his village Davandi on motorcycle along with his two companions. The complainant was driving his motorcycle bearing registration no. MH-33/K-8487. On the way, he was intercepted by one Scorpio four wheeler and from the said four wheeler one Lawrence Gedam and Pankaj alighted. Lawrence is the son of applicant no.1 Anandrao. After alighting from the vehicle, they immediately started assaulting on the companion of complainant Charandas and Ashok and thereafter said Lawrence Gedam snatched two mobiles of complainant and thereafter they gave threat to complainant that they are unnecessarily canvassing in the elections. Thereafter, as per the report, from his mobile Lawrence made a phone call to applicant no.1 and uttered following words :

“.....त्याने त्याच्या मोबाईलने कॉल केला व मोबाईलवर तो बोलला की पप्पाजी मी मामाजीला पकडलो आहे ”

8. Thereafter, by applying force the complainant and his two companions were asked to sit in the Scorpio. Thereafter, the vehicle was taken near Kadhavli, Tahsil Kurkheda. There, eight persons came on four motorcycles. As per the report, near Kadhavli village another two Scorpio

vehicles came, one having registration no. MH-33/2999 and from that vehicle applicant no.1 Anandrao alighted. Thereafter, he took the sit in the vehicle wherein complainant was forcefully asked to sit. Similarly, applicant no.2 Jeevan Patil also came in the said vehicle. After both the applicants sat inside the Scorpio vehicle in which the complainant and his two companions were confined, as per report, following has happened :

“.....हे सगळे गाडीत बसल्यानंतर लॉरेन्स याने त्याचे वडील आनंतराव गेडाम यांना बाहेरूनच बोलल्या की पप्पा आपण यांना गोवा येथे रवाना करू”.

9. Though first information report states that applicant no.1 Anandrao Gedam stated that one should not do like this, however no active step was taken by applicant no.1 Anandrao to rescue the complainant. Thereafter, applicant no.1 Anandarao asked the driver to take the vehicle towards Vairagad and he asked the complainant that he should not participate in the elections. Thereafter, as per report, the applicant no.1 made a phone call to one Shri Waddetiwar who was a sitting Member of Legislative Assembly of Chimur-Bramhpuri. As per the report, applicant no.1 disclosed that he has brought one contestant with him. Thereafter, the vehicle was taken to Thanegaon where according to the report Shri Waddetiwar came and he asked the applicant no.1 that this type of activity ought not to have been done by him. Thereafter, Shri Waddetiwar left the place. At this stage also, there was an opportunity for the applicants to release the complainant from their custody,

however that was not done and he was taken at Palasgaon and then left the applicant in the house of Prabhakar Tulavi.

10. According to the submission of the learned Senior Counsel for the applicants, though at this stage complainant was having ample opportunity to run away from the spot, he did not avail the same which shows that the applicant was not under coercion. Though the said submission appears to be very attractive at the first blush, however the said has to be rejected in view of the further statement of fact made in the first information report.

11. The first information report further states that at 04:00 O'clock in the morning said Prabhakar revealed that Lawrence has arrived on the spot and thereafter said Lawrence returned the mobile to him from which the complainant talked with his son. The complainant thereafter was taken in a vehicle. The said vehicle was ultimately intercepted by the son of the complainant and his 10-12 supporters and they thereafter took the complainant in their custody.

12. The first information report clearly shows the overt act done by the present applicants.

13. It is revealed to this Court that the applicant no.1 in past was the Member of Legislative Assembly. Thus, it can be fairly said that the applicant no.1 was knowing that

the election has to be conducted in transparent and in clean atmosphere. In spite of that, it appears that applicant has taken the step of abducting an independent candidate who according to the applicant no.1 might have affect his chances in election.

14. The reply would show that the statements of eye-witnesses are recorded which clearly throw light that the complainant was abducted by accused persons including present applicants. Even from the submission made by the learned Senior Counsel for the applicants, it is not in dispute that applicant no.1 was in company with the complainant and when the complainant was in custody of the applicant no.1, he made a phone call to Shri Wadettiwar who tried to prevail on the mind of the applicant no.1 that such activities ought not to have been done by abducting the contestant. At this particular point of time, when there was a word of advice from a sitting MLA to the applicant no.1, it was expected that he could have released the complainant from the captivity. However, the applicant no.1 has done otherwise.

15. The reply would show that the vehicles which were used in the crime are yet to be recovered. The applicants appear to be the influential persons and if the custodial presence of the applicants is not given to the police machinery, there is every possibility that they will tamper the prosecution case, is the submission made by the learned

Additional Public Prosecutor for the State and looking to the fact that the applicants are admittedly influential persons, can influence the course of investigation if they are not given in the custody of the police machinery.

16. In that view of the matter, I am of the opinion that this is not the case wherein this Court should exercise its discretion under Section 438 of the Code of Criminal Procedure in favour of the persons who bent upon to see that the democracy should not shape in proper way.

17. Consequently, the criminal application is rejected.

JUDGE

srwagh