

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

CRIMINAL APPLICATION NO. 284 OF 2020

1) Namdeo s/o Madhavrao Kivalekar
Age; 55 years, Occ; Service,
R/o; C/o; Panduran Gunderao Bobade
Bobade Niwas, Nagesh Colony,
Ahmedpur, Dist; Latur.

2) Bhanudas s/o Madhavrao Kivalekar
Age; 62 years, Occ; Advocate,

3) Sanjivani w/o Bhanudas Kivalekar
Age; 45 years, Occ; Housewife,

Applicant Nos. 2 & 3 R/o; Survey No. 20/5B,
Flat No.B/301, Paramount Erode,
Pune, Tq. Haveli, Dist. Pune.

4) Tukaram s/o Madhavrao Kivalekar
Age; 48 years, Occ; Business,
R/o; M.K. Tires, in front of Prasad Garden,
Ahmedpur, Dist. Latur.

**...APPLICANTS
(Orig. Accused)**

V E R S U S

1) The State of Maharashtra
Through its Investigation Officer,
Sonkhed Police Station,
Tq. Loha, Dist. Nanded.

2) Vitthal Madhavrao Kivalekar
Age; 53 years, Occ; Agri & Service,
R/o; Kiwla, Tq. Loha, Dist. Nanded.

**..RESPONDENTS
(Original
Complainant)**

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Shri. N.B.Narwade, Advocate for Applicants
Shri S.J. Salgare, learned A.P.P.for Respondent No.1
Shri. U.B. Bilolikar, Advocate for Respondent No.2
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**CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

DATE : 21/10/2020

ORDER : [PER : M.G. SEWLIKAR, J.]

1. The applicants have preferred this application under Section 482 of the Code of Criminal Procedure, (Cr.P.C.) for quashing of the First Information Report, (F.I.R.) No. 119 of 2019, registered with Sonkhed Police Station, Tq. Loha, District Nanded, for the offences punishable under Sections 307, 435, 504, 506 read with Section 34 of the Indian Penal Code.

2. Facts leading to this application in nutshell can be stated as under :

The informant (respondent No. 2 herein) lodged F.I.R. on 13.11.2019 alleging that applicant Nos. 1, 2 and 4 are his brothers and applicant No. 3 is the wife of applicant No. 2. Respondent No. 2 lives at Kiwla, Tq. Loha, Dist. Nanded. He owns ancestral land of 5 acres. Out of ancestral income, he purchased land to the extent of 23 acres. The applicants and respondent No. 2 agreed to effect partition amongst themselves. The panchas suggested that respondent No. 2 should be given 5 acres land more and in the remaining land of 23 acres, all the brothers including respondent No. 2 shall have equal share. The applicants did not agree with the suggestion. In the month of May, 2018, when respondent No. 2 and his wife were in the land Gut No. 69,

one of his brothers pelted stones at him and his wife.

3. It is further alleged that on 11.11.2019 at 11.30 p.m., when he was sleeping in his farm house in Gut No. 79, he heard sound of approaching car. Applicant Nos. 1, 2 and 4 came there and tied him to a cot. He raised shouts. Applicant Nos. 1 and 2 caught hold of him and applicant No. 3 took out a bottle of poison from her purse and poured it in the mouth of respondent No. 2. On these allegations, F.I.R. bearing No. 119 of 2019 came to be lodged on 13.11.2019 at 6.42 p.m., with the Police Station, Sonkhed Tq. Loha, Dist. Nanded on the basis of which, offence punishable under Sections 307, 435, 504, 506 read with Section 34 the I.P.C., has been registered against the applicants.

4. Heard Shri. N.B.Narwade, the learned counsel for applicants, Shri S.J. Salgare, learned A.P.P. for respondent No.1 and Shri. U.B. Bilolikar, the learned counsel for respondent No.2.

5. Shri Narwade, the learned counsel for the applicants argued that the applicant Nos. 2 and 3 were not present at the spot of incident. The C.V.TV. footage shows that applicant Nos. 2 and 3 were at their house at Paramount Eros Co-Operative Housing Society, Katraj Kondva Road, Pune at 22.09 p.m. It has been alleged that the incident took place at 11.30 p.m. The distance between two places is 450 k.m. and it is impossible for anyone to cover the distance of 450 k.m., within a period of 20 minutes from Katraj road Pune to the spot of

incident. He argued that this falsifies the case of respondent No. 2. Except respondent No. 2, there is no evidence to show that applicants had attempted the murder of respondent No. 2. He argued that this false complaint has been filed to extract more agricultural land. He has, therefore, prayed for allowing the application.

6. Shri Salgare, the learned A.P.P. for the respondent No.1 - State and Shri Bilolikar, the learned counsel for respondent No. 2, argued that the statements of the witnesses recorded by police, indicate the presence of the applicants at the spot of incident and that respondent No. 2 was tied to a cot. The medical evidence also suggests that poison was administered to respondent No. 2. They therefore, prayed for dismissal of the application.

7. During the pendency of the application, charge-sheet came to be filed. On perusal of the charge-sheet, it is seen that statements of witnesses i.e. Maroti Balaji Londhe and Vitthal Babarao Bhavar have been recorded. Maroti Balaji Londhe has stated that on hearing shouts, he went there and found that respondent No. 2 was tied to a cot. He released him. Respondent No. 2 told him that applicant Nos. 1 and 2 had caught hold of him and applicant No. 3 poured poison in his mouth. Witness Vitthal Bhavar has stated that when he reached the spot of incident, he found the deceased was tied to a cot. He saw in the light of fire of Soyabin crop, a Swift Desire Car of white colour. He further saw that applicant Nos. 1 to 3 were proceeding in that car towards

Osmanabad. The medical certificate shows that respondent No. 2 was admitted in the hospital on 12.11.2019 at 12.45 a.m. The medical certificate further shows that unknown poisoning was detected. The spot panchanama shows that omitted food was seen at the spot. From this evidence on record, it cannot be said that no cognizable offence is disclosed against the applicants. The application therefore is bereft of any merit. Hence the following order is passed :

ORDER

- 1) Application is dismissed.

(M.G. SEWLIKAR)
JUDGE

(T.V. NALAWADE)
JUDGE