

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

CRIMINAL APPLICATION (APL) NO. 268/2014

- 1] **Raju S/o Vitthalrao Bhadre,**
Aged about 48 years, Occ. Business,
R/o. Bhande Plot, Nagpur
- 2] **Ayub S/o Amir Khan,**
Aged about 47 years, Occ. Business,
R/o. Quarter No. 147/5, Raghuji Nagar
Housing Board Colony, Behind Mate
Vyayam School, Nagpur

.... **APPLICANT(S)**

// VERSUS //

- 1] **State of Maharashtra,**
Through Police Station, Nandanwan
Nagpur
- 2] **Shri Girdhari S/o Sohanlal Agrawal,**
Aged about 55 years, Occ. Business,
R/o. 334 East Wardhaman Nagar,
Nagpur-8

.... **NON-APPLICANT(S)**

Shri U.P. Dable, Advocate for the applicant(s)
Ms. M. Deshmukh, APP for the non-applicant no. 1
Shri M.A. Sable, Advocate for the non-applicant no. 2

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.
DATED : 15/12/2020

ORAL JUDGMENT : (PER:- Z.A. HAQ, J.)

- 1] Heard.

2] By this application under Section 482 of the Code of Criminal Procedure, the applicants – accused have prayed that F.I.R. bearing no. 85/2014 registered against them with the non-applicant no. 1 – Police Station for the offences punishable under Sections 143, 147, 148, 387, 452, 506B, 447, 379 and 120B of the Indian Penal Code and Sections 3 and 25 of the Arms Act, be quashed.

3] Learned advocate for the applicants has referred to the report lodged by the non-applicant no. 2 and has submitted that the ingredients necessary to constitute the offences alleged against the applicants are not made out. It is submitted that vague and general allegations are made that the applicants had demanded Rs. 50,00,000/- from the non-applicant no. 2 – Informant to remove the encroachment as alleged by the non-applicant no. 2 – Informant.

4] F.I.R. is registered on 11/03/2014. The applicants immediately approached this Court by this criminal application under Section 482 of the Code of Criminal Procedure and by the order dated 21/04/2014, this Court directed issuance of notice to the non-applicants and granted interim order staying the further proceedings on the basis of the F.I.R. The criminal application came to be admitted on 06/05/2014 and the interim order was

continued, and it continues till today. Consequently, the investigation could not progress.

5] During the pendency of this criminal application, the non-applicant no. 2 – Informant filed an affidavit sworn on 14/12/2020 stating that the investigation could not progress because of the interim order dated 21/04/2014 which came to be continued on 06/05/2014. The non-applicant no. 2 – Informant expressed his frustration in para no. 5 of the affidavit as follows:-

“5) It is submitted that the applicant is now 62 years of his age, in 2016 he was suffer brain virtico stroke and because of that stroke he was admitted in the hospital and since then his health is deteriorating day by day. In the year 2020 he also suffer serious Corona attack and due to that attack he was admitted in the hospital. Now his health is not permitted to fight out the matter years together and therefore he do not want to proceed with this matter.”

After the affidavit of the non-applicant no. 2 – Informant came to be filed, the non-applicant no. 1 – Investigating Agency has filed reply to it taking strong objection to the accusations made by the non-applicant no. 2 – Informant that the non-applicant no. 1 – Investigating Agency now would not be able to investigate the matter effectively.

6] Be that as it may, after going through the material placed on record and examining the matter, we find that the jurisdiction under Section 482 of the Code of Criminal Procedure should not be exercised in the present case to abort the investigation. The applicants are on bail. It cannot be said that the investigation would cause any serious prejudice to the applicants, specially looking to the contention of the non-applicant no. 1 – Investigating Agency that three other crimes for the offences punishable under Sections 386 and 34 of the Indian Penal Code, for the offences punishable under Sections 143, 448, 384, 294, 506 and 427 of the Indian Penal Code and for the offences punishable under Sections 143, 147, 387, 109 and 120B of the Indian Penal Code are registered against the applicants.

Hence, the criminal application is **dismissed** with liberty to the applicants to approach appropriate Court after filing of the charge-sheet, if so advised.

JUDGE

JUDGE