

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

CRIMINAL APPLICATION NO.73 OF 2020

NAGESH S/O. MANMATH SAKHARE AND ANR

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for the Applicants : Shri D.A. Mane h/f Shri D.M. Pingale

APP for Respondent 1 : Shri S.Y. Mahajan

Advocate for Respondent 2 : Shri N.R.Pawde h/f Shri P.A. Bharat

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CORAM : RAVINDRA V. GHUGE

&

R. G. AVACHAT, JJ.

DATE :- 15th March, 2021

Per Court :-

1. By this Criminal Application, both the applicants seek the quashing of the First Information Report bearing Crime No.26/2016 and the charge-sheet bearing No.18/2016.
2. Considering the order that we are passing, by consent of the parties, after appreciating the role ascribed to applicant No.2/ Jyoti Nagesh Sakhare, the learned advocate for the applicants, on instructions, seeks leave to withdraw this application to the extent of applicant No.1/ Nagesh Manmath Sakhare, who is the main accused. This Criminal Application is, therefore, disposed off as withdrawn to the extent of applicant No.1/ Nagesh Manmath Sakhare.

3. Insofar as applicant No.2/ Jyoti is concerned, respondent No.2 herein, who has been arrayed as the respondent pursuant to our order dated 24.02.2021, submits that respondent No.2 would have no objection for entertaining this application as regards applicant No.2/ Jyoti.

4. We have carefully perused the First Information Report dated 26.02.2016. We have also perused the statement of Mayur, who is the son of the deceased Shivkanya on whose Dying Declaration the FIR was registered. We have also perused the said Dying Declaration.

5. We have also perused the law laid down by the Honourable Supreme Court in the matters of *Madhavrao Jiwaji Rao Scindia and another vs. Sambhajirao Chandrojirao Angre and others, AIR 1988 SC 709* and *State of Haryana and others vs. Ch. Bhajan Lal and others, AIR 1992 SC 604*.

6. Two other accused, namely, Bunti @ Umesh and Nikita w/o Bunti @ Umesh were before this Court in Criminal Application No.935/2019. By oral judgment dated 23.07.2019, this Court has allowed the application to the extent of Nikita. The application to the extent of Bunti @ Umesh was disposed off as withdrawn since this Court was not inclined to entertain the same.

7. We find from the record before us that there is no allegation against applicant No.2/ Jyoti. In fact, applicant No.2/ Jyoti was incited and encouraged by applicant No.1/ Nagesh along with Nikita to beat the

mother of Mayur i.e. deceased Shivkanya. It has been set out in the FIR that applicant No.1/ Nagesh along with other three accused had reached the house of Mayur and had abused Mayur and his mother Shivkanya in foul language. Applicant No.1/ Nagesh had threatened Shivkanya by stating that he would rape her in public. Having found the abuses and threats to be unbearable, she rushed inside the house, locked herself in the room, poured kerosene on herself and set herself ablaze.

8. Since we do not find any allegation against applicant No.2/ Jyoti, akin to Nikita, and in view of the reasons assigned by this Court in its order dated 23.07.2019 while entertaining the application filed by Nikita and for the reason of respondent No.2 having consented for allowing this application to the extent of applicant No.2/ Jyoti, that this Criminal Application is partly allowed. FIR bearing Crime No.26/2016 and the charge sheet bearing No.18/2016 stand quashed to the extent of applicant No.2/ Jyoti. Needless to state, the proceedings before the Trial Court to the extent of applicant No.2/ Jyoti are rendered infructuous.