

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1243 OF 2020

1. Jaysinh@ Raju Arjunsinh Thakur
Age 45 years, Occu. Agril.,
R/o. Yeulkhed, Tq. Shegaon,
Dist. Buldhana.
2. Shakuntala w/o. Arjunsinh Thakur,
Age 60 years, Occu. Household,
R/o. Yeulkhed, Tq. Shegaon,
Dist. Buldhana.

....Applicants.

Versus

1. State of Maharashtra
Through its Police Inspector,
Police Station Gondi,
Tq. Ambad, Dist. Jalna.
2. Gopalsinh s/o. Ramsinh Chavan,
Age 65 years, Occu. Agril.,
R/o. Tirthpuri, Tq. Ghansawangi,
Dist. Jalna.

....Respondents.

Mr. V.P. Narawade, Advocate for applicants.

Mr. B.V. Virdhe, APP for respondent No. 1/State.

Mr. G.J. Pahilwan, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATED : 11/01/2021.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final hearing.

2) Present proceeding is filed for relief of quashing of F.I.R. No. 27/20 registered in Gondi Police Station, District Jalna for the

offence punishable under section 380 of Indian Penal Code. The crime is registered on the basis of report given by one Gopalsinh Ramsinh Chavan, who is respondent No. 2. It is his contention that he learned from his wife that on 20.1.2020 his sister, present applicant No. 2 and son of sister, present applicant No. 1 had visited his house and they had taken away gold bangles of his mother weighing 5 tola and cash of Rs.25,000/- which was with his mother and which was collected from pension amount and this was done by using force and threats were given when the wife of the informant had tried to prevent the two persons from doing so. It is his contention that he had requested the applicants to return the gold bangles and cash amount, but they did not do it and so he was required to give the report. The report was given on 26.1.2020.

3) The papers of investigation were made available and they show that statement of the wife of informant came to be recorded on 27.1.2020 which is to the aforesaid effect. There are statements of other relatives like Ramesh Sinh, brother of the informant and it is to the effect that he had made inquiry with the mother and mother had narrated the incident.

4) The police papers and the report of police officer show that police visited the house of informant after registration of the crime. In initial visit they had not recorded the statement of Gayabai,

the mother of the informant, who lost the money and articles and on second visit i.e. on 25.5.2020 when police visited, they learned that she was dead. The death certificate shows that she died on 25.5.2020.

5) The police papers and the contentions show that deceased Gayabai was aged about 105 years and she was bed ridden. It is contended that the gold bangles and the cash amount was with the deceased and by using force, these articles were taken away by the present applicants. Only witness shown is Laxmibai, the wife of the informant and that can be seen from the F.I.R. It appears that some civil dispute was pending between the parties and the suit was filed by applicant No. 2 for relief of partition against brothers and others in respect of the ancestral property in February 2018. Further, if Gayabai was bed ridden and police could not record the statement of Gayabai, probability is created that either no theft took place or Gayabai handed over the articles to applicant No. 2 who is daughter out of her will. It was property of Gayabai and due to this circumstance, it was necessary to record the version of Gayabai. In such circumstances, it is difficult to infer that such incident did take place and daughter of old woman committed theft of such articles by using force from a lady aged about 105 years. Nothing is specific including the description of the articles. There is clear possibility of concoction and false implication due to aforesaid reasons. There is

no explanation about the delay in F.I.R. and for not recording the statement of old lady. This Court holds that it will be abuse of process of law if the applicants are directed to face the trial for aforesaid offence. In the result, following order.

ORDER

- I. Application is allowed.
 - II. Relief is granted in terms of prayer clause 'B'.
- Rule is made absolute in those terms.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

ssc/