

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2408 OF 2019

1. Vitthal s/o Sitaram Lavhat
Age: 68 years, Occ. Nil,
2. Ganesh S/o. Vitthal Lavhat
Age : 35 years, Occu. Service,

Both R/o. Shevgaon, Near Zilla Parishad
School, Khandoba Nagar, Tq. Shevgaon,
Dist. Ahmednagar.

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

VERSUS

1. The State of Maharashtra,
Through Investigation Officer,
Shevgaon Police Station,
Tq. Shevgaon, Dist. Ahmednagar.
2. Dwarkabai W/o. Kacharu Wavare,
Age : 54 years, Occu.: Household,
R/o. Varur Bk., Tq. Shevgaon,
Dist. Ahmednagar.

... **RESPONDENTS**
(Ori. Complainant)

...
Mr. Narayan B. Narwade, Advocate for Applicants.
Mr. G. O. Wattamwar, APP for Respondent No.1 / State.
Mr. N. S. Jaju, Advocate for Respondent No.2.

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

DATE : 04th February, 2021.

ORDER: (Per T. V. Nalawade, J.)

. The application is filed for relief of quashing of FIR bearing C.R. No.319 of 2019, registered with Shevgaon Police Station, Tahsil Shevgaon, District Ahmednagar. The crime is registered for the offences punishable under Sections 323, 324, 504, 506, 143, 147, 148 and 149 of the Indian Penal Code.

2 Both the sides are heard.

3 The crime is registered on the basis of report given by Respondent No.2. In the FIR dated 11th July, 2019, she has described the incident dated 11th July, 2019. According to her, after 07:15 am on that day, when she was present in front of the house and she was cleaning the premises, the neighbouring landholders like Vitthal Lavhat (Applicant No.1), Ganesh Lavhat (Applicant No.2), Pandit Lavhat, Dilip Wavare, Ramesh Chitle came together and they started taking bullock cart through the standing crop of cotton, which was there in land Gat No.109 belonging to the family of informant. She has contended that when she questioned the accused about this act, they picked up quarrel and during the quarrel accused Ganesh gave

blow of axe to her, which hit her left hand and she sustained bleeding injury. It is her contention that her son Ganesh came out of the house after hearing hue and cry and when they tried to convince the accused to behave well, Accused Nos.1, 3, 4 and 5 assaulted the informant by stick, fist blows and kicks. It is contended that threat of life was given by them and then they left. The police papers show that on the same day, the informant was referred by police to Government Hospital and the Government Hospital found injuries on left hand little finger like CLW of the size of 3 x 2 cm, blunt trauma over abdomen and blunt trauma over back. The age of the injuries was within 46 hours. The injuries were simple in nature. Copy of spot *Panchanama* is there and it shows that some weapons were found on the spot though there were no other signs to show that some incident had taken place there. Some portion of the field was showing that bullock carts were being taken by that portion. There are statements of witnesses like Ganesh Wavare, Nitin Wavare, Kacharu Wavare, Vishnu Mhaske and Satish Wakade as eye-witnesses.

4 The learned counsel for the Applicants submitted that Applicant No.2 Ganesh is in service as assistant teacher and his place of service is Shevgaon. He has produced on record a copy of certificate issued by the Headmaster of *Abasaheb Kakade*

Madhyamik Vo Ucch Madhyamik Vidyalaya, Shevgaon and it is to the effect that on 11th July, 2019 this accused was present in the campus of school between 07:00 hours and 12:45 hours. The learned counsel submitted that due to this circumstance, it can be said that Ganesh is falsely implicated in the matter. This submission cannot be accepted. It can be said that Applicant No.2 wants to take the defence of alibi. Some photographs are produced and the learned counsel for Applicants submitted that in CCTV cameras, Applicant No.2 was captured and those photos show that on 11th July, 2019, Applicant No.2 Ganesh was present at other place. This can be also used for proving alibi. There is some procedure, which is required to be followed for consideration of that record and further there is right to the prosecution to test the witness if a witness is examined to prove alibi. So, on this ground the relief cannot be granted to Ganesh.

5 In respect of Applicant No.1 Vitthal, it was submitted by the learned counsel that there are no specific allegations against him in the FIR and the allegation of assault is mainly against Ganesh. It was submitted that the age of Vitthal was around 68 years at the relevant time and so it cannot be believed that he had participated in the incident. This submission is also not acceptable. In FIR, there is specific allegation that this accused alongwith other accused

assaulted the informant with fist blows and kicks and also with sticks. There were injuries like blunt trauma and they are already mentioned by this Court.

6 The learned counsel for Applicants then submitted that some civil dispute was going on between the parties and the side of the informant was attempting to prevent the Applicants from using the cartway. He submitted that the Civil Court had given decision in favour of Applicants in that regard and the Applicants had right to use that portion as cartway. He submitted that in respect of the same day incident, which took place on 11th July, 2019, Mandabai Lavhat, member of the family of Applicants had given report and that shows that the incident as alleged by informant did not take place. This submission is also not acceptable. On the contrary, the complaint dated 11th July, 2019 shown to be given to the police by Mandabai shows that the Applicants are admitting that some incident did take place on that day due to aforesaid dispute.

7 The discussion made above shows that it cannot be said that there is no material at all against the Applicants. In view of the aforesaid material, this Court holds that the relief claimed cannot be given. In the result, the following order is passed:

ORDER

The application stands dismissed.

ndm

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]