

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

CRIMINAL WRIT PETITION NO. 1634 OF 2020

1. Sandeep s/o Deelip Wayal,
Age 34 years, Occ. Service
Serving as Assistant Block
Development Officer,
R/o Amalner, Tq.Amalner,
District Jalgaon.
2. Lotan s/o Dashrath Chinchore,
Age 45 years, Occ. Service
serving as Extension Officer
(Village Panchayat)
R/o Amalner, Tq.Amlaner,
District Jalgaon.
3. Anil s/o Bhaskar Rane,
Age 48 years, Occ. Service
serving as Extension Officer
(Village Panchayat)
R/o Amalner, Tq.Amlaner,
District Jalgaon.

...PETITIONERS

-VERSUS-

1. The State of Maharashtra.
Through the Police Inspector,
Amalner Police Station,
Tq. Amalner, District Jalgaon.
2. The Sub Divisional Police Officer,
Amalner, Tq.Amalner,
District Jalgaon.
3. Smt.Mayabai w/o Praveen Wagh,
Age : 34 years, Occupation : Social Work,

R/o Mathgavhan, Tq.Amalner,
District Jalgaon.

...RESPONDENTS

...
Shri V.D. Hon, Senior Advocate h/f Shri A.V. Hon, Advocate for the
petitioners/ accused.

Shri R.V. Dasalkar, APP for respondent Nos.1 and 2.

Shri H.F. Pawar, Advocate for respondent No.3/ informant.

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CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.

Reserved on :- 31st March, 2021

Pronounced on :- 07th April, 2021

JUDGMENT (Per Ravindra V. Ghuge, J.):

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By this petition, the petitioners have put forth prayers B, C and D as under :-

- “B) *Issue a writ of certiorari or writ in the nature of certiorari to quash and set aside the F.I.R. No.0681 of 2020 registered with Amalner Police Station for the offences punishable under Sections 385, 509, 504, 506 of I.P.C. and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989;*
- C) *Pending the hearing and final disposal of this Criminal Writ Petition grant stay to the further proceedings of the F.I.R. No.0681 of 2020 registered with Amalner Police Station for the offences punishable under Sections 385,*

509, 504, 506 of I.P.C. and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989;

D) Pending the hearing and final disposal of this Writ Petition the respondents be directed not to take any coercive action against the petitioners in pursuance to the F.I.R. No.0681 of 2020 registered with Amalner Police Station for the offences punishable under Sections 385, 509, 504, 506 of I.P.C. and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989;"

3. We have considered the strenuous submissions of the learned Senior Advocate on behalf of the petitioners, the learned prosecutor on behalf of respondent Nos.1 and 2 and the learned advocate on behalf of respondent No.3/ informant.

4. Petitioner No.1 is the Assistant Block Development Officer and petitioner Nos.2 and 3 are the Extension Officers (Village Panchayat). They had initiated steps for an enquiry and action against the informant, who is the Sarpanch of village Mathgavhan, for having indulged in misappropriation of public funds while implementing the Swaccha Bharat Mission and the grants received under the 14th Finance Commission Scheme. As action under Section 39(1) of the Maharashtra Village Panchayats Act, 1958 seeking disqualification of the informant as a Sarpanch, was initiated, that the informant has filed a frivolous FIR No.0681/2020 with the Amalner Police Station. She has alleged that the petitioners have committed offences punishable under Sections 389, 509,

504 and 506 of the Indian Penal Code and under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. It is canvassed by the petitioners that they have not committed any offence as is alleged in the FIR. The informant has filed the same only to pressurize the petitioners as they have initiated an enquiry in her affairs as a Sarpanch. A primary enquiry report has been submitted to the Chief Executive Officer, Zilla Parishad, Jalgaon, who has forwarded the same to the Commissioner (Revenue), Nashik Division, Nashik, for initiating the process for removal of the informant under Section 39 of the 1958 Act.

6. It is then submitted that petitioner No.1 belongs to the “Dhangar” caste, which is recognized as a Nomadic Tribe (N.T.). He has put in seven years of service and his year of retirement is 2044. He has a clean and unblemished service record for seven years. Petitioner No.2 also belongs to “Dhangar” caste and has a clean service record for 26 years. Petitioner No.3 belongs to the “Pardhi” community, which is recognized as a “Scheduled Tribe” (S.T.). He has also put in 26 years of service and has not faced any departmental enquiry.

7. It is then submitted that as these petitioners probed into the matter of inappropriate expenditure of the 14th Finance Commission funds, they noticed that the Village Development Officer (Gram Sevak)

Mr.Prashant Bhaidas Wankhede was not cooperating in the enquiry. A notice for production of the record was issued on 18.03.2020 and since he refused to supply the record, petitioner No.1 suspended him. A show cause notice dated 29.06.2020 has also been issued to respondent No.3/ informant as the proceedings for her disqualification were initiated. The primary report of the Deputy Chief Executive Officer, Zilla Parishad, Jalgaon dated 28.07.2020 would indicate the involvement of the informant as well as the earlier Sarpanch Mrs.Chetana Jitendra Pawar.

8. It is then contended that these petitioners also belong to the reserved tribe categories. The offence alleged by the informant would not attract the sections of the IPC set out in the FIR. No offence can be made out under Section 3 of the 1989 Act and the FIR is an abuse of the process of law, which deserves to be quashed and set aside.

9. The learned advocate for respondent No.3/ informant submits, on the basis of the affidavit in reply filed, that she became the Sarpanch on 22.02.2018. As she belongs to the reserved category, several persons developed antipathy towards her. Petitioner No.1 had called the Gram Sevak Shri Prashant Wankhede in his office and demanded a contribution of Rs.1 lac under the Toilet Construction Scheme. He directed Mr.Wankhede to convey this message to the informant. Later on, petitioner No.1 created a whatsapp group by name "*Ghar Patti/ Pani Patti Vasooli*". Courageously he posted messages from time to time on the whatsapp

group demanding illegal contributions. The whatsapp screenshot printouts are placed on record.

10. The informant further submits that as petitioner No.1 continuously demanded illegal gratification, she went to his office on 06.12.2019 along with her husband and two other witnesses, namely, Kiran Pawar and Shivaji Pawar. When questioned, petitioner No.1 got annoyed and abused her in full public view as under :-

“तुला काय अक्कल आहे, तुम्ही मागास जातीच्या लोकांना प्रशासन सांभाळता येत नाही, तू सरपंच पदावर कशी राहते ते मी पाहतो, तुला अपात्र केल्याशिवाय मी गप्प बसणार नाही असे म्हणून मला व इतरांना त्यांच्या दालनातून बाहेर हाकलून दिले ”

He then demanded sexual favours in the presence of her husband and two persons by stating as under :-

“.... तुझ्या कडे contribution चे पैसे नाहीत तर मी रात्री फ्री असतो, तू रात्री आल्यास तुझे सर्व कामे होतील अश्या दुष्ट हेतूने व अश्लील भावनेने मला हिनवले आहे ...”

11. The informant submits that she was shattered after hearing such statements and after pondering over the chain of events, she finally got fed up and tendered her resignation to the Chairman of the Panchayat Samiti, Amalner on 24.02.2020. She also made representations to the Honourable Chief Minister and other authorities. The Chairman of the Panchayat Samiti summoned petitioner No.1, who tendered an apology to the informant and therefore, the informant withdrew her resignation after

being assured that he will not commit such acts in future.

12. The informant then contends that petitioner No.1, with the active cooperation of petitioner Nos.2 and 3, opened a tirade against her. They started preparing reports based on false allegations so as to oust the informant from her position as a Sarpanch. She relied upon the resolutions passed by the Panchayat Samiti dated 02.07.2020 and the written statements of the Block Coordinator and Cluster Coordinator of Swaccha Bharat Mission, Panchayat Samiti, Amalner, while replying to the show cause notice received by her. In her reply dated 17.07.2020, she has set out the entire procedure and sequence of events to indicate that she had not misused a single rupee. However, as these petitioners were preparing false reports against her and made every attempt to make life a hell for her, that she lodged the FIR. The police authorities were convinced that the preparation of false reports/ evidence against a person belonging to the Scheduled Caste/ Tribe would attract Section 3 of the 1989 Act. False and fabricated preliminary enquiries were conducted to manufacture documentary evidence against the informant.

13. We find that, practically, in all matters under Section 482 of the Code of Criminal Procedure, 1973, the accused approaches the Court on the ground that the First Information Report (F.I.R.), on the face of it, does not disclose ingredients that would constitute a cognizable offence. Thus, the inherent power of the High Court, in its jurisdiction under

Section 482, is invoked for seeking the quashing of the F.I.R..

14. In *C.B.I. vs. Tapan Kumar Singh, (2003) 6 SCC 175 : AIR 2003 SC 4140*, the Honourable Supreme Court has held in paragraph 22 that “*The law does not require the mentioning of all the ingredients of the offence in the FIR. It is only after completion of the investigation that it may be possible to say whether any offence is made out on the basis of the evidence collected by the investigating agency.*” It is observed that an FIR is not an encyclopedia which must disclose all the facts and details relating to the offence alleged to have been committed. It requires no debate that an FIR is merely a report by the informant about the commission of a cognizable offence and it cannot be ruled out that minute details may not be mentioned. It cannot be ignored that an FIR pertains to an offence, which is alleged to have been committed and the informant, in a disturbed state of mind and shaken on account of a serious offence committed, approaches a police station for recording an FIR.

15. In the *State of Punjab vs. Dharam Singh, 1987 SCC (Cri.) 621 : 1987 Supp. SCC 89*, the Honourable Supreme Court held that the High Court had erred in quashing the FIR by going beyond the averments, to consider the merits of the case even before the investigating agency has embarked upon the legal exercise of collecting evidence.

16. In *Kurukshetra University vs. State of Haryana, (1977) 4 SCC 451 : AIR 1977 SC 2229 (a Three Judges Bench)*, the Honourable

Supreme Court has observed thus:-

“It surprises in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482, Criminal Procedure Code, it could quash an FIR. The Police had not even commenced investigation into the complaint filed by the warden of the University and no proceeding at all was pending in any Court in pursuance of the FIR. It ought to be realized that inherent powers do not confer any arbitrary jurisdiction on the High Court to act according to its whim or caprice.”

17. In ***Geeta Mehrotra and another vs. State of Uttar Pradesh and another, (2012) 10 SCC 741***, the Honourable Supreme Court has held that in the absence of any specific allegation in an FIR, prima facie, indicating no case against the co-accused, the Court would have the power to quash an FIR.
18. In ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others vs. State of Gujarat and another, (2017) 9 SCC 641***, the Honourable Supreme Court has laid down the guiding principles to be considered in determining whether an FIR could be quashed, as under:-

- “(1) *Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.*
- (2) *The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an*

offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

- (3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.*
- (4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court.*
- (5) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.*
- (6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.*
- (7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.*
- (8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.*
- (9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the*

disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

- (9) *There is yet an exception to the principle set out in propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”*

19. Considering the crystallized position of law, we are of the view that we cannot venture into a fact finding exercise or conduct a parallel investigation while considering the petition invoking Section 482 of the Code of Criminal Procedure and Article 226 of the Constitution of India. It is for the investigating agency to investigate into the FIR and based on the documentary record collected during investigation, to file a charge sheet against the accused or hold that there is no material against them.

20. On perusal of the FIR, we find that the informant has set out specific incidents that have occurred on 04.12.2019, 06.12.2019, 28.12.2019, 24.02.2020 and 30.06.2020. After she received the show cause notice under Section 39(1) of the 1958 Act, dated 09.11.2020, that she realized that the petitioners have prepared false documentary evidence against her. On realizing that they are resorting to such methods

to oust her as a Sarpanch, that she finally lodged the FIR on 01.12.2020.

21. An FIR cannot be quashed solely on the ground of delay. The aspect of delay has to be considered in the facts and circumstances of each case and there is no specific yardstick to quash an FIR on the basis of the contention of delay. Prima facie, we find that the informant has set out the sequence of events from 04.12.2019 till 09.11.2020 on the basis of which, the FIR has been registered on 01.12.2020. Considering the averments in the FIR, the informant has made out offences against the petitioners. In view of the above, we are not inclined to entertain this petition. The same is, therefore, dismissed. Rule is discharged. No order as to costs.

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(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)