

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

922 CRIMINAL APPLICATION NO.3510 OF 2019

1. Bharat Genudas Khandagale
2. Ajit Genudas Khandagale
3. Ranjana Genudas Khandagale
4. Vishnu Janardhan Khandagale
5. Pushpa Vishnu Khandagale ...Applicants

versus

1. The State of Maharashtra
2. Gorakshanath Janardhan Khandagale ...Respondents

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Advocate for Applicants : Mr. Mahesh K. Bhosle  
APP for Respondent-State: Mr. Rajendra V. Dasalkar  
Advocate for Respondent No.2 : Mr. A. B. Chormal h/f S.R. Sapkal  
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**CORAM : V. K. JADHAV AND  
SHRIKANT D. KULKARNI, JJ.  
DATED : 24<sup>th</sup> AUGUST, 2021**

**PER COURT:-**

1. We have heard learned counsel for the applicants for some time.
2. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant No.1 Bharat Genudas Khandagale and applicant No.2 Ajit Genudas Khandagale. Leave granted. The application of applicant No.1 Bharat Genudas Khandagale and applicant No.2 Ajit Genudas Khandagale is

dismissed as withdrawn.

3. Learned counsel for the applicants submits that the respondent No.2 original complainant is the uncle of co-accused Bharat and co-accused Ajit. There is old dispute pertaining to the way leading to the agricultural land and the incident allegedly taken place on account of the said dispute. Though the names of applicant Nos. 3 to 5 are mentioned in the complaint and even though their names have been referred by the witnesses in their respective statements, recorded during the course of investigation, no specific role has been ascribed to them. Learned counsel has pointed out that the allegations, which *prima facie* attract Section 307 of I.P.C., have been made against co-accused Bharat and Ajit, whose application seeking quashing of F.I.R. came to be withdrawn today. Learned counsel submits that all the applicants are from one family and that is the reason even the female members are also not spared. Learned counsel submits that in the backdrop of this, the continuation of the proceeding against the applicants would amount to abuse of court process.

4. Learned counsel for respondent No.2 submits that *prima facie* there is evidence of formation of unlawful assembly and since the applicants herein were also members of unlawful assembly, they are liable and responsible for the act of the other member of unlawful assembly. Learned counsel submits that even though the allegations

have been made mainly against co-accused Bharat and Ajit, however, the applicants herein being the members of an unlawful assembly are liable, as the provision of Section 149 of I.P.C. speaks about constructive liability.

5. Learned A.P.P. for the respondent State submits that since the names of all applicants are mentioned in the F.I.R., it is for the trial court to find out as to whether there was formation of unlawful assembly or not. Further, the incident had taken place on account of dispute pertaining to the way leading to the agricultural land. Thus, considering the same, this criminal application is liable to be rejected.

6. In the case of ***State of Haryana and others vs. Bhajanlal and others, reported in 1992 Supp. (1) SCC 335***, in para 102, the Supreme court has given the categories of cases by way of illustrations wherein such quashing power under section 482 of Cr.P.C. could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. In para 102 (3) and (5), the following categories are mentioned by the Supreme Court:

*“(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no*

*prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."*

7. In the instant case, though we find names of the applicants are mentioned in the F.I.R. so also their names have been revealed during the course of investigation, however, no specific role has been attributed to them. Though applicant No.4 Vishnu has uttered certain words, however, it falls short for concluding that the said utterance of words amounts to instigation. It appears that the allegations have been made mainly against accused No.1 Bharat and accused No.2 Ajit, whose application seeking quashing of F.I.R. and the criminal proceeding came to be withdrawn. It further appears that respondent No.2 is uncle of co-accused Bharat and Ajit. The incident had taken place on trifling reason. We have also carefully gone through the charge sheet. It appears that though the injuries sustained by respondent No.2 are mentioned in the medico legal certificate, however, the concerned Medical Officer has not mentioned the nature of injuries, whether those are simple or grievous in nature.

8. Thus, considering entire aspect of the case, we are inclined to quash the criminal proceeding so far as the applicants before us are concerned. We are of the considered opinion that in terms of the ratio laid down by the Supreme Court in the case of ***State of Haryana and others vs. Bhajanlal and others (supra)*** the continuation of the proceeding against the applicants would amount to abuse of court

process. Hence, we proceed to pass the following order:-

**O R D E R**

- I. Criminal application is allowed in terms of prayer clause "B" to the extent of applicant No. 3 Ranjana Genudas Khandagale, applicant No.4 Vishnu Janardhan Khandagale and applicant No.5 Pushpa Vishnu Khandagale.
- II. Criminal application is accordingly disposed of.

**(SHRIKANT D. KULKARNI, J.)**

**(V. K. JADHAV, J.)**

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