

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

CRIMINAL APPLICATION NO. 4199 OF 2019

1. Bhagchand Sonaji Shirsath,
Age 59 years, Occu. Retired,
R/o. Eknath Nagar, Kedgaon,
Tq. & District Ahmednagar.
2. Mahesh Dnyandeo Bange,
Age 36 years, Occu. Private Service,
R/o. Tilak Road, Ahmednagar.
3. Ganesh Bhagchand Shirsath,
Age 28 years, Occu. Business,
R/o. Eknath Nagar, Kedgaon,
Tq. & District Ahmednagar.
4. Poornima Mahesh Bange,
Age 33 years, Occu. Nurse,
R/o. Tilak Road, Ahmednagar.
5. Rambhabai Dnyandeo Bange,
Age 65 years, Occu. Housewife,
R/o. Tilak Road, Ahmednagar.
6. Sangita Dnyandeo Bange,
[Sangita Navnath Kamble],
Age 48 years, Occu. Housewife,
R/o. Siddarthnagar, Ahmednagar.
7. Amol Navnath Kamble,
Age 27 years, Occu. Pentair,
R/o. Siddarthnagar, Ahmednagar.
8. Raju Navnath Kamble,
Age 25 years, Occu. Pentair,
R/o. Siddarthnagar, Ahmednagar.
9. Sakharbai Prakash Sonawane,
Age 60 years, Occu. Housewife,
R/o. Indira Nagar, Ahmednagar.
10. Rajasbai Deoram Magar,
Age 68 years, Occu. Housewife,
R/o. Warolacha Maruti Road, Nalegaon,
Ahmednagar.

11. Vijay Deoram Magar,
Age 30 years, Occu. Labour,
R/o. Warolacha Maruti Road, Nalegaon,
Ahmednagar.**Petitioners.**

Versus

1. The State of Maharashtra
2. Lata Dagadu Sirsath,
Age 44 years, Occu. Household,
R/o. In front of Datta Mandir, Shahunagar,
Kedgaon, Taluka and District
Ahmednagar.**Respondents.**

Mr. Joydeep Chaterji, Advocate for applicants.

Mrs. V.N. Patil-Jadhav, APP for respondent No.1/State.

Mr. D.R. Markad, Advocate for respondent No. 2.

WITH
CRIMINAL WRIT PETITION NO. 1561 OF 2020

Lata w/o. Dagadu Sirsath,
Age 45 years, Occu. Household,
R/o. Opp. Datta Mandir, Shahunagar,
Kedgaon, Taluka and District
Ahmednagar.**Petitioner.**

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. The Superintendent of Police,
Ahmednagar.
3. The Police Station Incharge
Kotwali Police Station,
Ahmednagar, Taluka and
District Ahmednagar.**Respondents.**

Mr. D.R. Markad, Advocate for petitioner.

Mrs. V.N. Patil-Jadhav, APP for respondents.

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

DATED : 03/02/2021.

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

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.
2. Criminal Application No.4199/2019 is filed for relief of quashing of C.R.No.559/2017 registered with Kotwali Police Station, Ahmednagar for offences punishable under sections 395, 354, 435, 427 of Indian Penal Code. The report was given by respondent No. 2 of this proceeding Smt. Lata Shirsath. It appears that the parties are relatives of each other. In the second proceeding bearing Criminal Writ Petition No. 1561/2020, relief is claimed by this informant of direction to police to see that chargesheet is filed and the things are expedited as the crime was registered in the year 2017 and on the date of petition, chargesheet was not filed.
3. Copy of F.I.R. is on the record and it shows that incident dated 17.12.2017 is described. Allegations are made that on that day, at about 15.30 hours when the informant and her daughter in law were present in the house with grandson of informant, all the accused entered her house. She has made allegations against Bhagchand that he misbehaved with her, he caused tears to her

clothes and he virtually made her naked. Allegations are made against other accused Mahesh and Ganesh that they assaulted her by using sticks on all parts of the body and caused her injuries. She has made allegations that accused Pournima, Rambha, Sangita and two sons of Sangita like Amol and Raju and others like Sakharbai and Rajeshbai virtually pulled down her house consisting of two rooms. She has made allegations that the household articles were thrown away by these persons and from her house, gold ornaments worth Rs.25,000/- and court papers were taken away. In respect of incident dated 17.12.2017 she gave report on 18.12.2017 and the crime came to be registered for offences punishable under sections 395, 354, 435 and 427 of I.P.C. Papers of investigation contain photographs taken at the time of spot panchanama. The photographs show that the house consists of two rooms and the walls of the house were virtually pulled down and household articles were lying in scattered condition. Receipt in respect of ornaments is produced by her. Injury certificate is on record to show that she was examined medically immediately and atleast nine contusions were found. There will be evidence of the eye witnesses and thus, it cannot be said that no incident took place. As the offence punishable under section 395 of I.P.C. will be used and there are aforesaid circumstances, it cannot be said that some of the accused had not played any part in the incident. For all these circumstances and nature of allegations made, this Court holds that it is not possible to

grant the relief of quashing of the F.I.R.

4. In other proceeding bearing Criminal Writ Petition No. 1561 of 2010 direction is claimed against police to see that the chargesheet is filed. This Court has already discussed the relevant material. Police report is there showing that police are opposing the quashing of the case. From this circumstance, it can be gathered that police want to take further action. Submissions made have created probability that due to the pendency of the matters, police did not take further action. Criminal Application No. 4199/2019 was filed for relief of quashing and after that there was pandemic period. It can be said that now police can take further action and file final report, chargesheet, if they form opinion that aforesaid offences are committed and there is material to make out case for chargesheet.

5. Submissions made by the learned counsel for accused that in the past, both the sides had filed complaints against each other and then they had settled the dispute, cannot help the accused at this stage. Submissions made that in one matter filed under Domestic Violence Act, relief was given to one Smt. Surekha by J.M.F.C., cannot be considered in the present matter. On the contrary, the record produced shows that informant Lata has been in possession of this house and the allegations show that the accused wanted to practically evict her from that house by using force. Due

to aforesaid circumstance, following order is passed :-

ORDER

- I. Criminal Application No. 4199/2019 is dismissed. Rule is discharged.
2. Criminal Writ Petition No.1561/2020 is allowed. In Criminal Writ Petition No. 1561/2020 a direction is hereby given to the concerned police/investigating agency to take decision with regard to filing of the report/chargesheet within three months from today. The claim of compensation of the petitioner can be considered by the trial Court. Rule is made absolute in aforesaid term.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

ssc/