

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO. 25 OF 2016

1. Asmita W/o Rahul Khadse,
Aged about : 26 years,
Occ : Household.
2. Rahul S/o Motiram Khadse,
Aged about : 30 years,
Occ. Agriculturist.
3. Namdeo S/o Ganaji Bhagat,
Aged about ____ years,
Occ. Agriculturist.

All R/o Pangari Navghare,
Tq. Mangrulpir, Dist. Washim.

... **APPLICANTS**

V E R S U S

1. State of Maharashtra,
Through Police Station Officer,
Mangrulpir, Tq. Mangrulpir,
Dist. Washim.
2. Nalinibai Wd/o Dinkarrao Bhagat,
Aged about : 62 years,
Occ. Household, R/o Mangaldham,
Mangrulpir, Tq. Mangrulpir,
Dist. Washim.

... **NON-APPLICANTS**

Shri A. V. Band, Advocate for applicants.

Shri N.S.Rao, Additional Public Prosecutor for non-applicant No.1-
State.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 11/03/2021.

ORAL JUDGMENT : (PER : AMIT B. BORKAR, J.)

1. By this application under Section 482 of the Code
of Criminal Procedure, the applicants have challenged registration

of First Information Report No.3178/2015 dated 22/12/2015 registered with the non-applicant No.1- Police Station for the offences punishable under Sections 294 and 506 r/w Section 34 of the Indian Penal Code.

2. First Information Report came to be registered against the applicants with the accusations that on 22/12/2015 at 2.00 p.m. when the non-applicant No.2 was present alongwith Shyam Baheti in the field, the applicants came there and abused the non-applicant No.2 in filthy language. It is further alleged that the applicants threatened the non-applicant No.2 with dire consequences. Therefore, the First Information Report came to be registered against the applicants on 22/12/2015. The applicants have therefore, filed present application challenging the registration of First Information Report. This Court on 27/01/2016 issued notice to the non-applicants and granted ad-interim relief in terms of prayer clause (ii). On 22/08/2016, this Court admitted present application and continued interim relief already granted.

3. The non-applicant No.1 has filed reply and it is stated that the Investigating Agency has recorded the statements of witnesses who have supported the version of the non-applicant No.2 and from the material collected by the Investigating Agency

ingredients of the offences alleged against the applicants are fulfilled.

4. On 11/09/2020, learned Advocate for the non-applicant No.2 was absent. Therefore, in order to give one chance to the learned Advocate for the non-applicant No.2, matter was adjourned for 28/09/2020. Again on 28/09/2020, learned Advocate for the non-applicant No.2 was absent. Today, when the matter was called out, again learned Advocate for the non-applicant No.2 is absent. Therefore, we have proceeded to decide the application on merits.

5. We have carefully considered the allegations in the First Information Report. The offence alleged against the applicants is under Section 294 of the Indian Penal Code. Section 294 of the Indian Penal Code reads as under :-

"[294. Obscene acts and songs. - Whoever, to the annoyance of others -

- (a) does any obscene act in any public place, or
- (b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]"

The ingredients of Section 294 of the Indian Penal Code which the non-applicant No.2 was required to fulfill -

i] the offender has done any obscene act in any public place or has sung, recited or uttered any obscene song or word in or near any public place, and

ii] has so caused annoyance to others.

6. Having considered the ingredients of Section 294 of the Indian Penal Code, in our opinion, in order to attract the consequences under Section 294 of the Indian Penal Code it is necessary that the offence must take place in public place. From the allegations in the First Information Report, it appears that the alleged offence took place in remaining agricultural field owned by the non-applicant No.2, which is a private property.

7. Apart from absence of essential ingredients of Section 294, it appears that there was civil dispute pending between the applicants and the non-applicant No.2 in the form of Regular Civil Suit No.60/2015 wherein the temporary injunction was granted in favour of present applicants restraining the non-applicant No.2 from disturbing the peaceful possession of the applicants over the agricultural land where the incident took

place. The order dated 31/10/2015 restrains the non-applicant No.2 from entering the agricultural field where the alleged incident took place. As per the accusations of the non-applicant No.2, the incident took place on 22/12/2015 that is after the order of injunction restraining the non-applicant No.2 from the disturbing the possession of applicants was passed.

8. Having overall consideration of the allegations in the First Information Report and the fact that an order of injunction in favour of the applicants in relation to property where the incident took place, we are satisfied that the continuation of present proceedings against the applicants would amount to an abuse of process of Court.

9. The other offence registered against the applicants is under Section 506 of the Indian Penal which is non-cognizable offence. In view of quashing of First Information Report under Section 294 of the Indian Penal Code, the Investigating Agency under Section 294 of the Indian Penal Code cannot investigate into the offence under Section 506 of the Indian Penal Code without permission from the Magistrate under Section 155(2) of the Code of Criminal Procedure.

10. We, therefore, pass the following order :-

First Information Report No.3178/2015 dated 20/12/2015 registered with the non-applicant No.1 - Police Station for the offences punishable under Sections 294 and 506 r/w Section 34 of the Indian Penal Code is quashed and set aside.

11. Rule is made absolute accordingly.

JUDGE

JUDGE

Choulwar