

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

CRIMINAL APPLICATION (APL) NO. 502 OF 2018

1. Ganesh Motiram Lanjewar,
Aged about 44 years, Occupation :
Private
2. Premlal Ganesh Nagpure,
Aged about 47 years, Occupation :
Private
3. Vijay Ganesh Nagpure,
Aged about 38 years, Occupation :
Private
4. Rakesh Maniram Kadukar,
Aged about 30 years, Occupation :
Private
5. Akhilesh Gyanprakash Seth,
Aged about 42 years, Occupation :
Private
6. Sadashiv Rambhau Waghde,
Aged about 40 years, Occupation :
Private
7. Trithraj Dhannalal Baghele,
Aged about 37 years, Occupation :
Business,
8. Maniram Narayan Kadukar,
Aged about 56 years, Occupation :
Private
9. Pramod Shivilal Nagpure,
Aged about 30 years, Occupation :
Private

Applicant Nos. 1 to 9 is the Resident of
Katangi Kala, Tahsil and District :Gondia.

10. Rajesh Anthony Loner,
Aged about 44 years, Occupation:
Private, R/o. Civil Lines, Gondia,
Tahsil and District : Gondia.

.... **APPLICANTS.**

// **VERSUS** //

1. State of Maharashtra,
Through Police Station, Gondia
Gramin, Tahsil and District:Gondia.
2. Prakash S/o. Baldeo Ramteke,
Aged about 45 years, Occupation :
Private, R/o. Katangi Kala, Tahsil
and District : Gondia.

.... **NON-APPLICANTS.**

Shri V.S.Mishra, Advocate for Applicants.
Shri T.A.Mirza, A.P.P. for Non-applicant No.1/State.
Shri M.A.Randive, Advocate for Non-applicant No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.
DATED : JANUARY 28, 2021.

ORAL JUDGMENT : (Per : Amit Borkar, J.)

1. Heard.
2. **RULE.** Rule is made returnable forthwith.
3. This is an application under Section 482 of the Code of Criminal Procedure challenging Charge-sheet No.23 of 2009, dated 11th February 2009, filed with Judicial Magistrate First Class, Gondia in pursuance of Crime No.281 of 2008 for the offences punishable under Sections 147,

148, 149, 325 and 427 of the Indian Penal Code read with Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Act of 1989”) and Section 135 of the Maharashtra Police Act and the Rules.

4. The First Information Report came to be registered against the applicants with the accusation that on 28/01/2008 at about 10:30 p.m. the applicants entered the house of the non-applicant No.2 and assaulted him. It is further alleged that the applicants damaged the property of non-applicant No.2 worth Rs.25,000/-. It is further alleged that in the assault right hand of the non-applicant No.2 was fractured. After the investigation, charge-sheet came to be filed against the applicants.

5. The applicants have therefore, challenged the filing of charge-sheet and further proceedings pending before the trial Court by way of filing the present application.

6. This Court on 14/06/2018 issued notice to the non-applicants. The non-applicant No.1, in pursuance of the notice, filed reply and it is stated that on 28/01/2018 the applicants assaulted the non-applicant No.2 and damaged property of the non-applicant No.2. It is stated that during the course of investigation the statements of witnesses were recorded which proves complicity of the applicants in the offences alleged against them and therefore, the non-applicant No.1 prayed for dismissal of the application.

7. The main thrust of the submissions on behalf of the applicants is to the effect that even if the allegations in the First Information Report are accepted as correct, none of the offence under the provisions of the Act of 1989 are made out. The statements which are recorded during the course of investigation are by way of an afterthought and in the First Information Report there is absolutely no allegation as regards the offence punishable under the Act of 1989.

8. In support of its submission the learned Advocate for the applicants relied upon the unreported judgment of this Court in Criminal Application No. 4314 of 2013, dated 23rd April 2014 and submitted that the facts of the said case are similar to the facts of the present case and the First Information Report and Charge-sheet to the extent of the offence under the provisions of the Act of 1989 deserve to be set aside.

9. We have carefully considered the contents of the First Information Report. The allegations in the First Information Report are only to the extent of the offences under the provisions of the Indian Penal Code. There is absolutely no allegation in the First Information Report as regards the offences which are alleged against the applicants under the provisions of the Act of 1989. We are, therefore, satisfied that in absence of the allegation making out offences punishable under the provisions of the Act of 1989, the case would be covered by Clause (1) of Paragraph No.102 in the case of *State of Haryana ..vs..Bhajan Lal*, reported in **1992 Supp.(1) SCC 335**. In

absence of the allegations in the First Information Report under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 prosecution against the applicants cannot be allowed to be proceeded. We are, therefore, satisfied that continuation of the proceedings under the provisions of the Act of 1989 against the applicant would amount to abuse of process of the Court.

10. We, therefore, pass the following order:

Charge-sheet No.23 of 2009, dated 11th February 2009, filed against the applicants in the Court of Judicial Magistrate First Class, Gondia in pursuance of Crime No.281 of 2008 to the extent of offence punishable under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quashed and set aside.

It is clarified that in so far as the offences under the provisions of the Indian Penal Code are concerned, the trial shall proceed in accordance with law.

Rule is made absolute in the above terms.

CRI.APPLN.NO.998/2018.

In view of disposal of Criminal Application No.502 of 2018, the instant application praying for time to file typed copies of faint pages does not survive, hence, it is **disposed of**.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)