

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

CRIMINAL APPLICATION (APL) NO. 447 OF 2014

1. Gajanan S/o. Suryabhan Raut,
Aged about 49 years, Occupation :
Agriculturist,
2. Mahadeo S/o. Suryabhan Raut,
Aged about 55 years, Occupation:
Agriculturist,
3. Vijay S/o. Mahadeo Raut,
Aged about 27 years, Occupation:
Agriculturist,

All the applicants are R/o. At village
Wasadi Bk., Tah.:Nandura, Dist. Buldhana.

.... **APPLICANTS.**

// **VERSUS** //

1. The State of Maharashtra,
through Police Station Officer,
Pimpalgaon Raja Police Station,
Dist. Buldhana.
2. Sunil S/o. Laxmanrao Wakode,
Aged about 38 years, Occupation:
Agriculturist, R/o.at village Wasadi Bk.
Tah. Nandura, Dist. Buldhana

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

Shri N.B.Kalwaghe, Advocate for Applicants.

Ms Mayuri Deshmukh, A.P.P. for Non-applicant No.1/State.

Ms Divya Joshi, Adv. h/f. Shri S.V.Sirpurkar, Adv. for Non-applicant No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.
DATED : JANUARY 08, 2021.

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

1. This is an application under Section 482 of the Code of Criminal Procedure challenging First Information Report bearing Crime No. 3025 of 2014, dated 14th June 2014, registered with non-applicant No.1- Police Station for the offences punishable under Sections 323, 504 and 506 read with Section 34 of the Indian Penal Code and under 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 also under Section 7(d) of the Protection of Civil Rights Act, 1955. The First Information Report came to be registered against the applicants on 14th June 2014 with the accusations that the applicants hurled abuses in the name of caste to the non-applicant No.2. It is also alleged that the applicants assaulted the non-applicant No.2. The applicants have, therefore, filed present application challenging registration of the First Information Report.

2. This Court on 25th July 2014 issued notice to the non-applicants and by way of interim relief directed not to take coercive steps against the applicants. On 18th November 2014 this Court issued Rule and continued the interim relief only insofar as the offence under the provisions of the Act of 1989 is concerned.

3. We have heard Advocates for the respective parties and the learned Additional Public Prosecutor.

4. Shri N.B.Kalwaghe, learned Advocate for the applicants invited our attention to the order dated 13th June 2014 passed by the Civil Judge Junior Division, Nandura in Regular Civil Suit No.62 of 2014, thereby directing the parties to maintain status-*quo* till next date. The non-applicant No.2 was defendant in the said suit. He submitted that on the very next day the First Information Report came to be registered against the applicants. He, therefore, submitted that filing of First Information Report was abuse on the process of the Court as the First Information Report was actuated by the order of status-quo granted by the Civil Court. He further submitted that the alleged witnesses of the incident, mentioned in the First Information Report, were close relatives of the non-applicant No.2, namely, wife of the brother-in-law and wife of the non-applicant No.2. He, therefore, submitted that none of the member from public was present when the alleged incident took place. He relied upon the judgment of the Hon'ble Apex Court in the case of *Swaran Singh ..vs.. State through Standing Counsel*, reported in **2009 ALL MR(Cri.) 260 (S.C.)**. He submitted that the view taken by the Hon'ble Apex Court is to the effect that if member of the public has not witnessed the incident and only close relatives have witnessed the incident the ingredients of the offence under Section 3(1)(r) of the Act of 1989 are not made out. He, therefore, submitted that the First Information Report deserves to be quashed and set aside.

5. The learned A.P.P. and the learned Advocate for the non-applicant No.2 submitted that the averments in the First Information Report constitute offence alleged against the applicants. They further submitted that it is not necessary that the member of the public should witness the incident. They submitted that there is no substance in the present criminal application and the same is required to be dismissed.

6. We have carefully scrutinized the contents of the First Information Report and the copy of the order passed by the learned Civil Judge Junior Division, Nandura on 13th June 2014. It appears that there was a dispute as regards road between the agricultural fields of the applicant and the non-applicant No.2. From the averments in the temporary injunction application, it appears that there was dispute as regards ingress and egress of the applicant and the non-applicant No.2. In the above backdrop, the learned Civil Judge Junior Division, Nandura granted order of status-*quo* on 13th June 2014. The First Information Report came to be registered on 14th June 2014 which is next day of grant of interim relief by the Civil Court. In the above background, we are satisfied that the registration of the First Information Report was abuse of process of the Court.

7. We have also considered the contents of the reply filed by the non-applicant No.1 wherein the non-applicant No.1 has stated that Suvarna Wakode and Sita Wakode had witnessed the incident. The Hon'ble Apex

Court in paragraph 34 of the case of *Swaran Singh* (supra) has held as under:

“34. However, a perusal of the F.I.R. shows that Swaran Singh did not use these offensive words in the public view. There is nothing in the F.I.R. to show that any member of the public was present when Swaran Singh uttered these words, or that the place where he uttered them was a place which ordinarily could be seen by the public. Hence in our opinion no prima facie offence is made out against appellant no.1.”

In view of the law laid down by the Hon’ble Apex Court in the case of *Swaran Singh* (supra), we are satisfied that the registration of the First Information Report against the applicants would amount to abuse of process of the Court. In so far as remaining offences, which are alleged against the applicants, are concerned the same being non-cognizable offences there is no impediment in quashing the First Information Report as the contents of the First Information Report does not disclose cognizable offence.

8. The Hon’ble Apex Court in the case of *State of Haryana Vs. Bhajan Lal*, reported in **1992 Supp(1) SCC 335** in paragraph No.102 has laid down parameters for quashing the First Information Report. In the facts of the present case, clause (7) of the parameters laid down by the Hon’ble Apex Court in the case of *Bhajan Lal* (supra) are attracted.

9. Having taken overall view of the facts and circumstances of the present case, we are satisfied that continuation of the criminal proceedings against the applicant would amount to abuse of process of the Court.

10. We, therefore, pass the following order:

First Information Report bearing Crime No. 3025 of 2014 dated 14th June 2014, registered with non-applicant No.1-Police Station for the offences punishable under Sections 323, 504, 506 of the Indian Penal Code and also under Section 3(1)(x) of the Scheduled Casts and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quashed and set aside.

Rule is made absolute accordingly.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

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