

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

CRIMINAL APPLICATION (APL) NO.514 OF 2016

1. Namdeo S/o. Ganaji Bhagat,
Aged about 58 years, Occ. - Service,
R/o. Near Water tank, Mangrulpir,
Tq.- Mangrulpir, Dist.- Washim.
2. Asmita W/o. Rahul Khadse,
Aged about 26 years, Occu.- Household,
R/o. Pangri Navghare, Post – Malegaon,
Dist. - Washim.
3. Sudhakar Kisan Ghode,
Aged about 29 years, Occ. Labour,
R/o. Malipura Tq.-Mangrulpir,
Dist. - Washim.

....APPLICANTS

----- VERSUS -----

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 the applicants.

Shri N. S. Rao, A.P.P. for the non-applicant No.1/State.

CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.

DATE : 11.03.2021.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard.
2. By this application under Section 482 of the Code of Criminal Procedure, the applicants have challenged filing of charge-

sheet No.57/2016 before the Judicial Magistrate First Class, Mangrulpir and consequent proceeding in Regular Criminal Case No.105/2016 in relation to Crime No.175/2016 registered with the non-applicant No.1-Police Station for the offences punishable under Sections 294, 323, 506, 427 read with Section 34 of the Indian Penal Code.

3. The First Information Report came to be registered against the applicants with the accusations that on 02.06.2016 at around 1.00 p.m. the present applicants demolished the boundary of agricultural field belonging to the non-applicant No.2 and on receiving the said information, the non-applicant No.2 visited the said farm. It is alleged that when she was leaving from the said agricultural land and proceeding towards Wada, the applicants abused the non-applicant No.2 in filthy language. It is further alleged that thereafter, the non-applicant No.2 again came back to the agricultural land and at that place also, the applicants abused the non-applicant No.2. The applicants have therefore, filed the present application challenging registration of the First Information Report.

4. This Court on 10.08.2016 issued notice to the non-applicants and granted *ad-interim* relief in terms of prayer clause-

(ii) and on 20.02.2018, admitted the present application and continued interim relief already granted.

5. The non-applicant No.1 has filed reply and has stated that the Investigating Officer recorded statements of witnesses and has also filed charge-sheet against the applicants. It is further stated that there is sufficient material against the present applicants which requires to be decided in trial.

6. The non-applicant No.2 also filed reply stating that incident took place on Wada Road and applicants abused her in filthy language. It is stated that the certificate produced on record by the applicants that the applicant No.1 was working at Office of the Tahsildar on 02.06.2016 is a got up document and therefore, prayed that the application deserves to be dismissed.

7. On 11.09.2020, when the matter was called out, the Advocate for the non-applicant No.2 was absent and therefore, the matter was placed on 28.09.2020. Again on 28.09.2020, the Advocate for the non-applicant No.2 was absent and therefore, the application was adjourned by eight weeks. On 09.12.2020, also the Advocate for the non-applicant No.2 was absent. On 04.01.2021 also the Advocate for the non-applicant No.2 was absent. On 04.03.2021 and 08.03.2021, on both dates the Advocate for the non-applicant No.2 was absent. Today, when the matter is called

out, the Advocate for the non-applicant No.2 is absent. We are therefore, deciding present matter on merits in absence of the Advocate for the non-applicant No.2.

8. We have carefully considered the allegations in the First Information Report. The learned Advocate for the applicants invited our attention to the order passed by this Court dated 13.05.2016 in Writ Petition No.2749/2016, thereby the non-applicant No.2 was restrained by an order of injunction from disturbing the possession of the applicants over the suit property. The suit property is the agricultural land where the incident started.

9. It is pertinent to note that while allowing the Criminal Application No.25/2016 between same parties, we have held that the earlier First Information Report where the incident took place in the same agricultural land was not public place. It appears that the non-applicant No.2 was aware about the legal position and therefore, the present First Information Report came to be registered. While narrating the incident the allegations in the present First Information Report are peculiar. The non-applicant No.2 stated that initially she was at the agricultural land, which is subject matter of dispute between the applicants and the non-applicant No.2. Thereafter, she proceeded towards Wada road and the incident which is alleged in the First Information Report took

place on Wada road which can be said to be public road and again she came back to the agricultural land which is subject matter of dispute between the applicants and the non-applicant No.2. The sequence of events mentioned in the First Information Report shows that the non-applicant No.2 wanted to implicate the applicants under Section 294 of the Indian Penal Code. To fulfill the essential ingredients of the said Section, mainly that incident took place at public place, present First information Report came to be registered against the applicants. In our view, in view of the order passed by this Court restraining the non-applicant No.2 from entering the agricultural field, the non-applicant No.2 could not to have entered the said field.

10. We have also considered the statements of witnesses recorded by the prosecution. On scrutiny of the statements of witnesses, it appears that the said statements are mechanically recorded and are of similar nature.

11. In view of the peculiar facts, and the civil litigation pending between the applicants and the non-applicant No.2 and the earlier First Information Report wherein similar allegations are made against the applicants being quashed by this Court, we are satisfied that the present First Information Report lodged by the non-applicant No.2 is not a legitimate prosecution. We are

therefore, satisfied that the continuation of the prosecution against the applicants would amount to abuse of process of the Court.

12. We therefore, pass the following order.

The charge-sheet No.57/2016 filed before the Judicial Magistrate First Class, Mangrulpir and consequent proceeding in Regular Criminal Case No.105/2016 pending before the Judicial Magistrate First Class, Mangrulpir in relation to Crime No.175/2016 registered with the non-applicant No.1-Police Station for the offences punishable under Sections 294, 323, 506, 427 read with 34 of the Indian Penal Code are quashed and set aside.

Rule is made absolute in the above terms.

JUDGE

JUDGE

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