

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.25 OF 2022

- 1) Dr. Anand S/o Gorakh More,
Age-34 years, Occu:Doctor,
- 2) Dr. Rama W/o Anand More,
Age-41 years, Occu:Doctor,
- 3) Dr. Gorakh S/o Bapurao More,
Age-76 years, Occu:Nil/Pensioner,

All R/o-More Hospital, Near Court Paranda,
Taluka-Paranda, District-Osmanabad

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through the Police Inspector,
Police Station, Paranda,
Tq-Paranda, Dist-Osmanabad,
- 2) Latif Mahammed Isak Qureshi,
Age-55 years, Occu:Agri.,
R/o-Darga Road, Kasba Galli,
Paranda, Tq-Paranda,
Dist-Osmanabad.

...RESPONDENTS

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Mr. Ganesh V. Mohekar Advocate for Applicants.
Mr. R.D. Sanap, A.P.P. for Respondent No.1.
Mr. Rohit Patwardhan Advocate h/f. Mr. Satej S. Jadhav
Advocate for Respondent No.2.

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**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 8th DECEMBER, 2022

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. By invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, the applicants are praying for quashment of the First Informant Report (for short "FIR"), the proceedings / charge-sheet against them. The offence came to be registered vide Crime No.380 of 2021 on 22nd November 2021 with Paranda Police Station, Taluka-Paranda, District-Osmanabad on the basis of the FIR lodged by respondent No.2 for the offences punishable under Sections 341, 324, 323, 504 read with Section 34 of the Indian Penal Code. After investigation, charge-sheet is also filed, hence this is Application for quashing and setting aside the FIR as well as the proceedings.

2. Heard Mr. Mohekar, learned Advocate appearing for the applicants, Mr. Sanap, learned APP appearing for respondent No.1 and Mr. Patwardhan, learned Advocate holding for Mr. Jadhav, learned Advocate appearing for respondent No.2.

3. It has been vehemently submitted on behalf of the applicants that all the applicants are medical practitioners and reputed persons. Applicant No.1 runs "More Multi-Specialty Hospital" at Paranda. Respondent No.2 suddenly entered the hospital and started behaving arrogantly and abusing in filthy language. He wanted to assault applicant No.1 and in order to save himself, applicant No.1 had pushed him, still respondent No.2 came near applicant No.1, caught hold of his neck and assaulted him severely. Respondent No.2 snatched the gold chain from the neck of applicant No.1. He also raised chaos in the hospital by snatching the phone. Informant – respondent No.2 tried to be stopped by the staff and at that time applicant Nos.2 and 3 came there. Thereafter respondent No.2 left the place by giving abuses. Applicant No.1 had immediately contacted the Police Officer of Paranda Police Station, however, the Police Officer told that he has come to Osmanabad and therefore, applicant No.1 should go to Police Station and lodge the report. When applicant No.1 was about to start to go to Police Station, at that time respondent No.2 came along with 15 to 20 persons and assaulted the father of applicant No.1 i.e. applicant No.3, who had received severe injuries and he became unconscious. Applicant No.3 was then taken inside the hospital.

When applicant No.1 went to Police Station, his complaint was not taken but he was sent for medical examination and he was also directed that his father should be taken for medical examination. In the meantime health of applicant No.3 got grievous and therefore, he was to be taken to the specialist. Thereafter applicant Nos.1 and 2 together went to Police Station but they were misbehaved by the Police and on the contrary offence was registered against them. The real incident is different and unnecessarily applicants have been framed. The investigation has been done in the prejudiced manner. Registration of the crime against the applicants is nothing but because of the enmity between the political groups and to defame the applicants. When the FIR has been lodged with ulterior motive, it would be unjust to ask the applicants to face the trial. If we peruse the entire charge-sheet, then it can be seen that there is no eye witness to the incident. Further the CCTV footage from the CCTV's installed at the hospital is giving a different picture. Learned Advocate therefore prayed for quashing of the FIR as well as the entire proceedings.

4. Per contra, learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submitted that there is ample evidence against the accused persons. The

investigation is complete and the statements of the witnesses under Section 161 of the Code of Criminal Procedure support the prosecution story. The medical evidence also supports the FIR. Learned Advocate for respondent No.2 further submitted that respondent No.2 had gone to the hospital of applicant No.1 just to make inquiry regarding one Ajit Borade, who was employed with the said hospital. He has also stated as to why he was requiring address of said Ajit Borade. The daughter of niece of respondent No.2 went missing on 19th November 2021 and it was informed by relative Bilal Qureshi that the said girl has gone along with said Ajit Borade. Respondent No.2 intended to get the said information just to trace out the girl, however, unnecessarily he was assaulted by the applicants, especially by applicant No.1, therefore, this is not a fit case where the inherent powers should be exercised by this Court.

5. At the outset, we would like to say that we cannot consider the story put forward by the accused persons i.e. applicants, as it should be proved by them before the concerned Court. The scope of application under Section 482 of the Code of Criminal Procedure is limited and this Court cannot go into the aspect of assessment of the evidence in deep or receive any evidence in any form. If there is evidence in the form of CCTV footage

available with the applicants, they are at liberty to produce it before the concerned Court and prove it as per the provisions of law.

6. Under the powers under Section 482 of the Code of Criminal Procedure; this Court is required to consider the FIR in question and the material collected by way of evidence in the charge-sheet, as to whether it is giving rise to an offence and if it is giving rise to such an offence, then it is against whom. Respondent No.2 has lodged the said FIR on the same day of the incident i.e. 21st November 2021. It is stated that the incident is stated to have taken place at 10.30 a.m. and the FIR has been given around 5.45 p.m., however, offence appears to have been registered around 13.10 hours of 22nd November 2021. In his FIR, the informant has stated as to where the niece had gone, since when she was missing and the information that with whom she had gone. He also states that he had gone to Katrabad which was the place of residence of said Ajit Borade, but he could not get the information and therefore, around 10.30 a.m. on 21st November 2021 he went to the hospital of applicant No.1 and he states that he requested applicant No.1 to give mobile number of said Ajit Borade. The informant then states that on his request also, applicant No.1 did not respond positively and the voices

were raised. He then states that applicant Nos.2 and 3 came there and applicant No.2 had latched the room where informant was standing and thereafter applicant No.1 had assaulted him with the help of bracelet in his hand on 2 to 3 occasions, causing bleeding injury to his eye. He says that applicant No.3 had assaulted by hands.

7. It can be seen from the FIR that as regards the role attributed to applicant Nos.2 and 3 is concerned, at the most, it may attract Section 341 and 323 of the Indian Penal Code. However, when informant himself says that applicant Nos.2 and 3 arrived at a later point of time, then whether they had the intention to do anything, is a question. Further the supplementary statement of the informant has been recorded on the next day i.e. 22nd November 2021 wherein it has been stated by him that applicant Nos.2 and 3 have not committed any offence, rather applicant No.3 has rescued him from the clutches of applicant No.1 but due to anger he had taken the names of applicant Nos.2 and 3. Thus, it can be said that there is no evidence against applicant Nos.2 and 3. It would be unjust to ask them to face the trial.

8. As regards applicant No.1 is concerned, it can be said that even as per his story, the presence of the informant in his hospital is admitted to him. There is staff attached to the hospital of applicant No.1 who had arrived at the spot after the chaos was raised and from that point of time they have given the account of what they had seen. Witness Sartaj Shaikh also states that afterwards when he asked applicant No.1 as to why the quarrel took place, he told that the informant's relative girl has eloped and therefore he wanted mobile number of applicant No.1 as well as Ajit Borade and on that count the dispute took place. Here the informant had suffered the injury and it is supported by the medical evidence. Under such circumstance, there appears to be *prima facie* evidence as regards the role attributed to applicant No.1 and therefore, as regards applicant No.1 is concerned, case is not made out for exercise of the inherent powers. Hence, we proceed to pass following order:-

ORDER

(I) Application is partly allowed.

(II) Application stands rejected as against applicant No.1 - Dr. Anand S/o Gorakh More.

(III) Application stands allowed as against applicant No.2 – Dr. Rama W/o Anand More and applicant No.3 – Dr. Gorakh S/o Bapurao More.

(IV) The First Information Report bearing Crime No.380 of 2021 dated 22nd November 2021 registered with Police Station, Paranda, Taluka-Paranda, District-Osmanabad for the offence punishable under Sections 341, 324, 323, 504 read with Section 34 of the Indian Penal Code and subsequent charge-sheet bearing No.2 of 2022, stands quashed and set aside as against applicant No.2 - Dr. Rama W/o Anand More and applicant No.3 – Dr. Gorakh S/o Bapurao More.

(V) Application stands disposed of accordingly.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE