

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

940 CRIMINAL WRIT PETITION NO.63 OF 2021

SHAIKH GULAB SHAIKH BABU AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. Nagargoje Prabhakar N
APP for Respondent : Mr. A V Deshmukh

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CORAM: SARANG V. KOTWAL & BHARAT P. DESHPANDE, JJ.
Dated : July 07, 2022

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PER COURT :-

1. This is a petition for quashing of the FIR registered at Ambajogai City Police Station vide C.R.No.438 of 2020 on 14.10.2020 under sections 143, 147, 323, 341, 427, 504, 506 of the Indian Penal Code and under sections 3(1)(r)(s), 3(1)(g) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Heard Mr. Nagargoje, learned counsel for the petitioners and Mr. Deshmukh, learned APP for the respondent No.1-State.

3. The FIR is lodged by the respondent no.2 Ghanshyam. He has stated that, he is a member of a

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Scheduled Caste. He has stated that, he had purchased a house in the year 2012 from one Balasaheb and he was in possession of the property. In 2015, one Sk. Husain Sk. Rashid sold another plot adjoining to earlier plot of the informant. That plot is also in possession of the informant. On 2.10.2020 at about 10.15 am when he saw that damage was caused to a tin-shed, rod and wire. The informant was showing this damage to his son's friend. At that time, all the petitioners came there. Applicant no.3 abused him with reference to the informant's case. The Applicant Sk. Gulab started pushing him. Applicant no.4 Shakiya gave blows with sticks to the informant's son. All of them were abused with reference to their caste. The nephew and informant's son's friend intervened and stopped further incident. After that, this FIR is lodged.

4. Learned counsel for the petitioners submitted that, this FIR is a result of Civil Dispute between the parties. Petitioner no.1 has filed Civil Suit against the first informant and, therefore, this FIR is lodged as a

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counter blast to this complaint. He submitted that, it is also a result of some money lending transaction entered into between the applicant no.1 and the informant. The incident has not actually taken place. Learned counsel for the petitioners submitted that, the informant had filed another C.R.No.532 of 2020 at Ambajogai Police Station against the same petitioners. In that case police have filed 'B' summary report.

5. Learned APP opposed this petition based on the avernments made in the FIR.

6. We have considered these submissions. At this stage, it is simply not possible to record a finding of fact as to whether the allegations in the FIR are true or false. If there was previous enmity, that also can be a reason for occurrence of this incident. The Hon'ble Supreme Court in the case of **Ramveer Upadhyay and another Vs. State of U.P. and another as reported in 2022 Cr.L.J. 2075** in paragraph no.39 has observed thus :-

“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under

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[Section 482](#) of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under [Section 482](#) of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under [Section 482](#) of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No.19/2018 is not such a case which should be quashed at the inception itself without further Trial.”

7. Though in another CR, police have filed ‘B’ summary report, that is yet to be accepted by the Magistrate and, secondly, in this particular matter, the FIR makes out a case. The enmity between the parties is obvious and, therefore, this being a double edged weapon, at this stage no benefit of doubt can be given to the petitioners. Ingredients of all offences as alleged

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against the petitioners are made out. There is no case in favour of the petitioners and, therefore, the petition is dismissed.

(BHARAT P. DESHPANDE, J.) (SARANG V. KOTWAL, J.)

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