

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

CRIMINAL APPLICATION NO. 523 OF 2021

- 1] Balkrushna s/o Uttamrao Mule
Age-39 years, Occupation - Agril.,
- 2] Maharudra s/o Laxman Wani
Age-37 years, Occupation - Agril.,
- 3] Laxman s/o Govindrao Wani
Age-70 years, Occupation-Agriculture,
All R/o. Limbaganesh,
Tq. & Dist. Beed.

... Applicants
[Original Accused]

Versus

- 1] The State of Maharashtra,
Through Police Station Neknur,
Dist. Beed.
- 2] Balkrushna s/o Tukaram Thorat
Age-55 years, Occupation-Service,
R/o. Limbaganesh,
Tq. & Dist. Beed.

... Respondents
[R. No.2 is Original Informant]

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Mr. Sudarshan J. Salunke, Advocate for the Applicants.

Mr. S. D. Ghayal, APP for Respondent No.1.

Mr. R. G. Hange, Advocate for Respondent No.2.

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

DATE : 6th December, 2022

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

. All Applicant Nos.1 to 3 herein, by way of instant proceeding, are seeking quashment and nullification of FIR and criminal proceedings arising

out of the FIR, which has been lodged at the instance of Balkrushna Tukaram Thorat (respondent No.2 herein). They are seeking exercise of inherent powers under Section 482 of the Code of Criminal Procedure (for short 'Cr.PC.').

2. Brief background of the case :

Present respondent No.2 lodged FIR informing that, applicants herein abused him and his son on caste basis and also threatened to kill him. According to informant, there was civil dispute between applicants and son of informant. In the said backdrop, initially on 24-07-2019, while respondent No.2 was at his work place, at around 08:30 a.m., applicant accused Nos.1 and 2 arrived there and threatened to withdraw the civil proceeding. Applicant accused No.3 also joined them. In the above backdrop, they abused him on caste basis and also beat him. According to the informant, he and accused being residents of same village, he ignored the occurrence and did not report to the Police. However, on 26-07-2019, accused persons again approached him, threatened him and humiliated him on caste basis. Hence, the FIR.

On the strength of above FIR, Neknur Police Station, District Beed, undertook investigation and after it's completion, filed charge-sheet.

Submissions

3. Learned Advocate for the applicants would strenuously submit that FIR

is patently with false allegations. It was motivated only because of dispute of land between son of informant and present applicants. He pointed out that according to informant, there was some incident of abuse on 24-07-2019 but there was no prompt reporting. Rather merely to harass applicants, after due deliberation, later-on on 27-07-2019, false and concocted story is cooked up showing that there was threat and caste abuse even on 26-07-2019.

4. It is pointed out that though investigating machinery carried out investigation and recorded statements of various witnesses, they are all unequivocal about no any incident taking place regarding caste abuse or threat either on 24-07-2019 or on 26-07-201 and moreover, FIR is lodged with revengeful attitude.

5. It is next submitted that son of informant - Ravindra had carried out agreement of sale but it was not concluded only at the instance of Ravindra and thereafter, present applicant Nos.1 and 2 purchased the said property. Later on, son of informant - Ravindra also initiated civil proceeding in the Civil Court and the same is pending. It is strenuously submitted that instant FIR is basically in the backdrop of civil dispute and therefore, it's sustainability or continuation of such proceeding amounts to abuse of process of law.

It is further submitted that after thorough investigation, Police machinery was about to file B-summary report. Later on, got up witnesses

were produced by the informant, who gave false statements about occurrence of threat and caste abuse to be real one. Such witnesses are interested witnesses and acquainted with informant. It is pointed out that only because of it, police machinery could not close the case and charge-sheet has been filed only on the strength of such statements, which are apparently with ulterior motive at the instance of informant.

In the above backdrop, learned Advocate for the applicants would point out that instant FIR and the criminal proceedings arising out of the same, being sheer abuse of process of law, relief as prayed is sought for. Learned Advocate places reliance on ***Hitesh Verma Vs. State of Uttarakhand and Another [(2020) 10 SCC 710]***.

6. While opposing the relief, learned APP would submit that informant who was a government servant, was threatened and abused on caste basis and therefore, on his FIR, investigation was carried out. It is pointed out that there is ample material regarding above occurrence i.e. in the form of statements of eye witnesses. There being sufficient material to go for trial against the applicants, he prays to dismiss the application.

7. On behalf of respondent No.2 learned Advocate also opposed the application and the relief submitting that there were repeated threats and repeated caste abuses to the informant in front of Talathi Office and at Bus

stand. There is clear utterance amounting to humiliation on caste basis in a public place and in public view. According to him, witnesses to that extent are examined by the investigating machinery. Learned Advocate also invited our attention to the FIR and charge-sheet. Therefore, according to him, there being sufficient and concrete material regarding the involvement of applicants, he submits that they must face trial and legal action that would follow. According to him, there is no abuse of process of law as alleged and he prays to dismiss the application.

8. Here, there being prayer for invoking inherent powers under Section 482 of Cr.P.C., it would be apt to briefly discuss settled legal provision on this point and as to in and what circumstances said powers can be exercised by this Court.

In the landmark case of *Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.*, reported in *(2007) 12 SCC 1*, it was observed as under:

“23. This Court in a number of cases has laid down the scope and ambit of courts’ powers under section 482 of Cr.P.C. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court.”

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of the court, and*
- (iii) to otherwise secure the ends of justice.*

24. *Inherent powers under section 482 of Cr.PC. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”*

Similarly, in ***Vineet Kumar v. State of U.P ; (2017) 13 SCC 369***, after referring to several other cases, including ***State of Haryana and others v. Ch. Bhajan Lal ; AIR 1992 SC 604***, the Hon’ble Apex Court concluded and made following observations in Paragraph No. 41 :

*“41. Inherent power given to the High Court under Section 482 Cr.PC is with the purpose and object of advancement of justice. In case solemn process of court is sought to be abused by a person with some oblique motive, the court has to thwart the attempt at the very threshold. The court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in **State of Haryana v. Bhajan Lal ; 1992 Supp (1) SCC 335**. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr PC to quash the proceeding under Category (7) as enumerated in *State of Haryana v. Bhajan Lal (supra)*, which is to the following effect:*

“102. ... (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

*Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal*, but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 Cr PC and quashed the criminal proceedings.”*

Recently in the case of ***Mahendra K.C. Vs. State of Karnataka and Another***; (2022) 2 Supreme Court Cases 129, the Hon'ble Apex Court in para No.19 observed as under:

*“19. The High Court has the power under Section 482 to issue such orders as are necessary to prevent the abuse of legal process or otherwise, to secure the ends of justice. The law on the exercise of power under Section 482 to quash an FIR is well-settled. In **State of Orissa v. Saroj Kumar Sahoo**; (2005) 13 SCC 540, a two-Judge Bench of this Court, observed that : (SCC pp. 547-48, para 8)*

“8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.”

9. Taking into account the above legal position and on going through the

submissions advanced by all the sides and also going through the FIR and charge-sheet, it is emerging that FIR at the instance of respondent No.2 is of 27-07-2019. Informant seems to be a “Kotwal” officiating in Talathi Office Mauje Limbaganesh, Tq. and District Beed. It is his version that his son Ravindra, who is working in Pune, had instituted civil proceeding against present applicant Nos.1 and 2 and others in the form of Special Civil Suit bearing No.59 of 2019. Informant claims that on 24-07-2019, while he was in his office at around 08:30 a.m., present applicant 1 and 2 approached him threatening that he and his son would be abducted and killed and he was beaten. He claims that applicant Nos.1 to 3 abused him on caste basis uttering that “ये मांगटया ये कोतवाला तुझ काय खर आहे, दावा जर काढुन घेतला नाही तर तुला व तझ्या मुलाला आम्ही संपवुन टाकुत, तुम्हाला जिवंत राहू देणार नाहीत. जर तुला मारून टाकले तर आम्चे कोणी काहीही वाकडे करू शकत नाही.” *(Hey Mangatya, Kotwala...no one can save you, we will finish you and your son off if the matter is not withdrawn. We will not let your alive. When we finish you off, no one can harm us).*”

Further according to the informant, considering the incident to be within villagers, he did not take legal action.

It is the informant’s version that on 26-07-2019 at 10:15 a.m., while he was standing in the vicinity of bus stand, applicants came there, threatened him and again abused him on caste basis and therefore, he lodged FIR.

Thus, from the FIR, there seems to be presence of only informant, applicants accused as FIR is apparently silent about any other person to be

present at such spot.

10. Investigating machinery seems to have recorded statements of various witnesses and the same are part of the charge-sheet. On going through each of such statements recorded under Section 161 of Cr.PC., it is emerging that almost all witnesses, whose statements are finding place in the charge-sheet on page Nos.43 to 56, are unanimously denying any occurrence between informant and applicants accused regarding any threat or caste abuse, rather they are specific that FIR is motivated one.

11. Learned Advocate for the applicants had made statement across the bar that in the light of nature of evidence emerging on thorough investigation, Police machinery had decided to file B-summary, however, to prevent the same, at the instance of informant, his acquaintances and relatives were introduced, who falsely stated about occurrence to be real and therefore, Police machinery had chosen to file charge-sheet. This specific point raised by applicants herein is not countered or denied by learned Advocate appearing for respondent No.2 before us. It is also pertinent to note that so called acquaintance of informant i.e. Shivaji Eknath Thorat, seems to have given statement on 24-02-2020 i.e. regarding some occurrence which allegedly took place on 24-07-2019 and 26-07-2019.

It is further surprising to note that alongwith the papers placed before us, some statements are enclosed, which are collectively described as “Exhibit R-1 colly”, which seems to have been recorded on 29-05-2021 and are addressed to this Court, i.e. by the same witnesses whose statements under Section 161 of Cr.PC. were recorded earlier by the Investigating Officer wherein they had informed that no such occurrence has at all taken place. Now they are informing that those previous statements were recorded by the Investigating Officer without making any enquiry and even no statements are ever recorded by the Investigating Officer. However, such statements are also made part of investigation papers. Now, possibility of these witnesses being contacted by informant and with ulterior motive such statements / letters got written from them by informant cannot be ruled out. Be it so, we have already examined veracity and contents of statements of witnesses and have drawn inference on the basis of entire record before us. Therefore, subsequent introduction of such statements addressed to us raises fundamental question about it's veracity.

12. Another point raised by learned Advocate for applicants is that only on account of civil dispute between son of informant and applicants, false FIR is lodged with ulterior motive. In support of such contention, copies of civil proceedings are also placed on record. On going through the same, it is seen that civil proceedings are instituted by Ravindra Balkrushna Thorat i.e. son of

the informant against applicant Nos.1 and 2. Therefore, there is material on record suggesting previous pending civil dispute between son of informant and applicants accused.

13. Thus, on carefully examining the FIR discussed above, *prima facie* it is seen that in spite of some occurrence taking place on 24-07-2019, there was no prompt reporting of the same for the reasons best known to the informant. Even occurrence which allegedly took place on 26-07-2019 is reported on the next date i.e. on 27-07-2019. It is also emerging that threats and utterance on caste abuse are apparently attributed to all the three applicants at one and the same time. It is difficult to comprehend as to how three persons in one go, at one and the same time, could in-chorus use identical words for abusing the informant on caste basis.

Secondly, statements recorded under Section 161 of Cr.P.C. of various villagers also show that there was no alleged occurrence between informant and applicants accused at all. FIR is also silent about the said occurrence to be taking place in presence of anybody else. All such factors, coupled with existing civil dispute, go to show that there is substance in the submission made by learned Advocate for applicants herein that FIR is motivated one.

14. The Hon'ble apex Court in the case of **Hitesh Verma** (*supra*) in paragraph No.16 held as under:

“16. There is a dispute about the possession of the land which is the subject matter of civil dispute between the parties as per respondent No.2 herself. Due to dispute, appellant and others were not permitting respondent No.2 to cultivate the land for the last six months. Since the matter is regarding possession of property pending before the Civil Court, any dispute arising on account of possession of the said property would not disclose an offence under the Act unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Caste or Scheduled Tribe.”

*In the case of **Khuman Singh v. State of M.P** [(2020) 18 SCC 763] the Hon’ble Apex Court held in paragraph No.15 that “the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe.*

In paragraph No.18, the Hon’ble Apex Court concluded that “therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out.”

15. In above backdrop, if the facts of the case in hand are examined, here

also there was civil dispute pending between informant's son and applicants accused. FIR itself is highlighting that abuse and threat were in backdrop of said civil dispute. It is not revealed that only because informant belongs to Scheduled Caste, he was purposely and deliberately humiliated. There is other side of the coin in the form of civil dispute. Consequently, in the light of above discussed legal settled position, we find that in case in hand also no offence of alleged caste abuse is sufficiently made out. *Prima facie* as discussed above, there is element of civil dispute resulting into alleged occurrence dated 24-07-2019 and 26-07-2019.

16. Lastly, on taking overall survey and audit of the FIR, and charge-sheet, *prima-facie* we are of the opinion that FIR is with oblique motive. It would not be safe or proper to allow prosecution of applicants in the backdrop of such quality and nature of material that has come on record as a result of investigation. Making applicants face prosecution on the strength of above material would definitely expose them to injustice.

17. The Hon'ble Apex court in the case of ***Prathvi Raj Chauhan v. Union of India*** [(2020) 4 SCC 727] in paragraph No.12 held that "*the Court can, in exceptional cases, exercise power under Section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions*".

Therefore, finding it a fit case for exercise of inherent powers, here also there is no hesitation to grant relief as prayed as *prima facie* here applicants succeeded in demonstrating that FIR is apparently abuse of process of law and it's continuation is required to be prevented for ends of justice to meet. Resultantly, we proceed to pass the following order :

ORDER

- (i) Application is allowed in terms of prayer clauses (C), first (D) and second (D).
- (ii) Application is accordingly disposed of.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

SPT