

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

CRIMINAL APPLICATION NO.688 OF 2020

MOHSIN KHAN MAHEBUB KHAN PATHAN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...
Advocate for Applicants : Ms. S.T. Jadhav h/f. Mr. Ashok R. Tapse
APP for Respondents: Mr. S.D. Ghayal
Advocate for Respondent No.2 : Ms. S.G. Mapari (appointed)

...
**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

DATE : 16.11.2022

PER COURT :

By invoking the power of this Court under Section 482 of the Code of Criminal Procedure, the applicants are seeking quashment of the Crime No.553/2019 registered with Nanalpeth Police Station, Tq. and Dist. Parbhani for the offence punishable under Section 452, 323, 504, 506 and 143 of the Indian Penal Code.

2. The sum and substance of the allegations in the FIR lodged by the respondent No.2 are to the effect that on account of a dispute pertaining to immovable property, all the applicants had criminally trespassed into his house and abused and assaulted him and his family members.

3. The learned advocate for the applicants would submit that there is delay in lodging the FIR which has not been explained or attempted to be explained in the FIR or at any latter point of time. There are no independent witnesses. Statements of only family members have been

recorded. There is a long standing civil dispute between the two sides. Several complaints were lodged by the applicants against the respondent No.2 because of his adamancy in considering their request for transferring the land. A false and concocted story has been build up to intimidate the applicants. She also points out the papers to demonstrate that the civil dispute is pending before a court and she would submit that it would be an abuse of the process of the Court if the applicants are made to face the trial. The case is squarely covered by the decision in the matter of **State of Haryana V/s Bhajan Lal; 1992 Supp (1) SCC 335.**

4. The learned APP and the learned advocate for the respondent No.2 referring to the affidavit-in-reply of the latter strongly oppose the application. They submit that there was a strong motive as can be discerned from the several complaints filed by the applicants against the respondent No.2. They submit that admittedly a civil dispute has been pending between the parties. At this juncture, except the family members no independent witness can be expected to be present considering the nature of the crime wherein the applicants had criminally trespassed the house, abused and assaulted the respondent No.2 and his family members.

5. We have considered the rival submissions and the papers. There is no dispute about the fact that the parties are involved in a civil dispute since long.

6. Apart from the civil suit the applicants have also lodged several complaints against the respondent No.2. It is their case that he has not been

cooperating in settling the dispute in spite of a partition of the lands. This very fact *prima facie* is sufficient to infer that there was a strong motive for the applicants to commit the crime. For that matter even the FIR refers to the very same dispute as to why the applicants had threatened him and his family members and thereafter assaulted them.

7. Since the incident had taken place inside the four walls of the respondent No.2's house, no interference can be drawn merely because except the family members there are no witnesses whose statements have been recorded under Section 161 of the Code of Criminal Procedure.

8. As far as delay is concerned, according to us no inference at this stage can be drawn on the basis of the delay and the prosecution and the respondent No.2 would be entitled to explain it even during the course of the trial.

9. We do not see that the applicants are being falsely implicated and the case false under any of the categories laid down in the matter of **State of Haryana V/s Bhajan Lal** (supra). The application is rejected.

10. Learned advocate Ms. S.G. Mapari has been appointed to represent the respondent No.2. We quantify her fees as Rs.5000/-.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)