

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

CRIMINAL APPLICATION NO. 1192 OF 2022

1. Satyendra S/o. Shivram Jindam
Age. 64 years, Occ. Business,
R/o. 2-9-52, Jindam Niwas,
Jindamwadi, Behind Kala Mandir,
Vazirabad, Nanded.

2. Rama W/o. Satyendra Jindam,
Age. 62 years, Occ. Household,
R/o. As above.

3. Surendra satyendra Jindam,
Age. 35 years, Occ. Service,
R/o. As above.

.... Applicants

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Vazirabad Police Station, Nanded.

2. Jayashree Satyendra Jindam,
Age. 62 years, Occ. Household,
R/o. Behind Kala Mandir,
Somesh Colony, Nanded.

....Respondents

Advocate for Applicant : Mr. S.S. Bora
APP for Respondent No. 1 : Mr. A.M. Phule

**CORAM : SMT. VIBHA KANKANWADI &
RAJESH S. PATIL, JJ.**

DATE : 16th SEPTEMBER, 2022.

JUDGMENT [PER : RAJESH S. PATIL, J.] :-

1] By the present application, the applicants are praying for

quashing and setting aside the FIR bearing No. 308 of 2020 registered at Vazirabad Police Station, Nanded under Sections 341, 323, 504, 506 r/w. 34 of IPC and resultant Criminal proceeding bearing SCC No. 2222 of 2020 pending in the Court of Chief Judicial Magistrate, Nanded.

A. FACTS :

2] The informant/respondent No. 2 Jayashree Satyandra Jindam has filed FIR. It states that she is resident of Nanded. She has a daughter and she resides with her daughter in her house. There is matrimonial discord with her husband since last 25 years. There is a suit for partition pending in between herself and her husband. She alleges that one Ramabai resides with her husband, who has two sons, namely, Sumendra and Samendra. On 30th May, 2020, at 5.15 p.m. when she was placing the clothes on bicycle for drying, the husband Satyendra (applicant No. 1 herein) abused her and asked her to leave the house and by saying “तू इथे राहु नको”, he pushed her. At that time, Ramabai and her two sons Sumendra and Samendra rushed towards her, beat her, obstructed her and said that they will see how she can enter the house. When the daughter of complainant tried to intervene, Ramabai beat her with kick and her husband drove her away from the house and said they will not allow her to reside in the house and threatened her with life. Accordingly, the FIR in question, bearing No. 308 dated 4th June, 2020 came to be lodged.

2.1] The present criminal application is filed under Section 482 of Cr.p.c. for quashing of FIR and charge sheet which is filed and numbered as SCC No. 2222 of 2020 pending before the learned C.J.M. Nanded.

2.2] The applicants submit that, already a Special Civil Suit was

filed by complainant as well as her daughter wherein a partial decree in favour of the daughter of the complainant is passed. Pursuant to the said decree the complainant and her daughter are enjoying possession of the property and infact it is the complainant and her daughter who have challenged the decree by filing First Appeal before this Hon'ble Court, whereas, the applicant No. 1 has not challenged the said decree and as such he had no occasion to suddenly go to the house of complainant and initiate the quarrel and as such considering these aspect of the matter, it is highly improbable to believe the allegations made in the FIR and thus same is required to be quashed and set aside.

2.3. The applicants submits that, perusal of the charge-sheet would also show that, no statements of any neighbours are recorded and there are no independent witnesses who have seen the alleged incident. It is only the complainant, her daughter and the labours who were working with a the complainant have made the allegations which further shows that, the entire investigation is carried out in order to falsely implicate the applicants herein.

2.4. That no reasonable person could come to the conclusion that the contents of the FIR makes out or constitutes the offence punishable under Sections 341, 323, 504, 506 read with of the Indian Penal Code and, therefore, continuation of the proceedings would result in unnecessary harassment of the applicants.

B. SUBMISSION OF PARTIES :

3] Heard Mr. Satyajit S. Bora. Advocate for the applicants and Mr. A.M. Phule, learned APP for the State.

4] Learned counsel Mr. Bora submitted that perusal of the FIR

and entire charge sheet would show that it is a completely false and concocted story prepared by the complainant in order to falsely implicate the applicants for the reason that the applicants had no reason whatsoever to suddenly go to the house of the complainant and start quarreling. As such, the FIR and the criminal prosecution needs to be quashed and set aside.

5] He further submitted that a Special Civil Suit for partition has been filed by the complainant as well as her daughter wherein a partial decree in favour of the daughter of the complainant is passed Pursuant to the said decree, the complainant and her daughter are enjoying possession of the property. He further submitted that the said decree has been challenged by the complainant and her daughter. Therefore, there was no occasion for the applicants to go to the house of the complainant and initiate the quarrel. Considering these aspects, the FIR and the proceedings deserve to be quashed and set aside.

6] Mr. Bora further submitted that there is a huge delay of about 4 days in lodging the FIR which is fatal to the prosecution because there is no explanation as to why complainant waited for four days to register the FIR. The FIR needs to be quashed on this ground alone, he argued.

7] Mr. Bora, further submitted that no statements of any neighbour are recorded and there are no independent witnesses who have seen the incident in question. It is only the complainant, her daughter and the labourers who were working with the complainant have made the allegations, which further shows that the entire investigation is carried out in order to falsely implicate the applicants.

8] Mr. Bora would further submit that applicant No.2 has a heart ailment which is evidence from her medical record and as such, the allegation against her that she gave kick blows to the complainant completely falsifies the FIR as well as allegations made therein, and hence, the FIR and the entire criminal proceeding needs to be quashed and set aside.

9] Mr. Bora further submitted that applicant No.3 is resident of Pune due to his service, but during the lock-down he had come to Nanded and was working from home and had no occasion, whatsoever, to abuse or assault the complainant and her daughter. He, therefore, submitted that the applicant No.3 has been falsely implicated so that he does not get any job. He further submitted that the FIR is lodged with malafide intention and oblique purpose to wreak vengeance against applicants. Therefore, the FIR and criminal proceeding deserves to be quashed and set aside.

10] Learned APP – Mr. Phule submitted that specific allegations have been made against all the applicants, hence there is no question of quashing of FIR and criminal proceedings. There is a huge delay in challenging the FIR and charge-sheet by the applicants, hence even on this ground alone the criminal application be dismissed and applicants be directed to face trial. The application may therefore be dismissed.

C. ANALYSIS :

11] It is settled law that even though, the inherent power of the High Court under [Section 482](#) of the Cr.P.C., to interfere with criminal proceedings is wide, such power has to be exercised with circumspection, in exceptional cases. Jurisdiction under [Section 482](#) of the Cr.P.C is not to

be exercised for the asking.

12] In *Monica Kumar (Dr.) v. State of U.P.*, (2008) 8 SCC 781 the Apex Court has held that inherent jurisdiction under [Section 482](#) of the Cr.P.C 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.

13] Interference would only be justified when complaint did not disclose any offence, or was patently frivolous, vexatious or oppressive.

14] In the present case, if the allegations in the FIR are seen, *prima facie*, it cannot be said that there is no offence made out. It is settled law that unless it is pointed out that allegations in the FIR even if taken at their face value do not constitute a cognizable offence. Such is not the case here. We can exercise our discretion under Section 482 only if there is an abuse of process of law and only to harass the applicant the FIR is registered.

15] Secondly, It is stated in the FIR that the complainant herein the wife of applicant No.1 and out of the wedlock daughter Sumedha was born. Civil suit for partition is filed by respondent No. 2, along with her daughter against applicant No. 1 and others. The said suit was decreed. The applicant No. 2 claims to be second wife of applicant No. 1. All these are disputed questions of fact. This being an application under Section 482 of Code of Criminal Procedure, we cannot go into such disputed questions of fact, whether, she really is the first wife. It is for the trial Court to look into that aspect of the matter and hence, we are unable to exercise our discretion under Section 482 of Cr.P.C. at this stage.

16] Thirdly, it is to be noted that the present application has been filed almost 14 months after the FIR has been lodge. The delay is not satisfactorily explained. The only reason given is that there was COVID pandemic and the applicants had suffered due to that disease. According to us this cannot be a ground for the inordinate delay of 14 months in approaching this Court. It seems that only after the applicant No.3 was given an appointment in Tech Mahindra Company and when was not confirmed owing to the FIR in question having been filed against him; then the applicants have approached this Court by invoking jurisdiction under Section 482 of the Code of Criminal Procedure, for quashing.

17] Considering the above aspects of the matter, we are of the considered opinion that this is not a fit case wherein we should exercise our discretionary powers under Section 482 of Cr.p.c. There is no substance in the application and the same deserves to be dismissed. Hence, the following order :

ORDER

- i. The criminal application stands rejected.
- ii. The observations made herein above are, *prima facie*, in nature and it would have no bearing on the final adjudication of the proceedings.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE