

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.839 OF 2020

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| 1. | Baburao Manik Renge | | |
| 2. | Pawan Baburao Renge | | |
| 3. | Jiwan Baburao Renge | | Petitioners |

Versus

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|----|--|--|-------------|
| 1. | The State of Maharashtra
Through the Police Inspector,
Daithana Police Station,
Tal. & District Parbhani. | | |
| 2. | Santosh Uttamrao Mande | | Respondents |

WITH

CRIMINAL WRIT PETITION NO.841 OF 2020

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| 1. | Baburao Manik Renge | | |
| 2. | Pawan Baburao Renge | | |
| 3. | Jiwan Baburao Renge | | Petitioners |

Versus

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|----|--|--|-------------|
| 1. | The State of Maharashtra
Through the Police Inspector,
Daithana Police Station,
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| 2. | Santosh Uttamrao Mande | | Respondents |

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Ms. P.S. Talekar, Advocate for the petitioners.
Mr. M.M. Nerlikar, A.P.P. for respondent No.1 – State.
Mr. R.J. Nirmal, Advocate for respondent No. 2
(appointed)

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CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.

Reserved on : 4th April 2022
Pronounced on : 25th April 2022

Judgment (Per Sandipkumar C. More, J.) :

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at the stage of admission.

2. The petitioners as well as respondent No. 2 in both the petitions are the same. Moreover, it appears that the petitioners are seeking quashing of two First Information Reports and consequent criminal proceedings thereof, lodged by respondent No.2. Though the crimes are separately registered, but since the petitioners and respondent No.2 are same in both the matters, we find it appropriate to decide both these criminal writ petitions by common judgment.

3. So far as Criminal Writ Petition No. 839 of 2020 is concerned, the petitioners, who are the original accused, have sought quashing of F.I.R. bearing Crime No. 128 of 2020 registered with Daithana Police Station on 02.07.2020 for the offences punishable under Sections 324, 323, 504 read with Section 34 of the Indian Penal Code (for short "I.P.C.") and under Section 3(1)(r) of the Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act, 1989 (for short, “the Atrocities Act”). During pendency of this petition, charge-sheet has been submitted and therefore, the petitioners have challenged the criminal proceedings being Special Case No.106 of 202 arising out of the aforesaid crime and pending before the learned Special and Sessions Judge, Parbhani. Whereas, in Criminal Writ Petition No. 841 of 2020 the petitioners are seeking quashing of F.I.R. being Crime No. 54 of 2020 registered with Daithana Police Station on 08.04.2020 for the offences punishable under Sections 323, 504, 506 read with Section 34 of I.P.C. and under Sections 3 (1)(r) and 3 (1 (s) of the Atrocities Act. In respect of the said crime, charge-sheet has been filed, and therefore, the petitioners have also sought quashing of the said charge-sheet being Special Case No. 97 of 2020 pending before the learned Special and Sessions Judge, Parbhani.

4. So far as F.I.R. in respect of Crime No.128/2020 is concerned, it is contended by respondent No.2-informant that on 01.07.2020 one Datta Narayan Renge with whom he had acquaintance, had come to village Jamb. At about 6.00 p.m. on the same day Datta asked respondent No.2 to meet him and accordingly when respondent No.2 had gone to Post Galli

at village Jamb to meet Datta, Datta told him that his application for anticipatory bail was rejected by the Court, and therefore, he was to surrender before Police Station. When the said talks were going on, all the petitioners came there at about 6.30 p.m. and abused respondent No.2 in filthy language by referring his caste. The petitioners started beating him and also beat Datta for the reason as to why he became witness in the earlier dispute between themselves and respondent No.2. Petitioner No.3 Jiwan beat respondent No.2 on his left hand and left thigh as well as on chest with the help of iron rod. The petitioners also beat Datta Narayan Renge. Due to beating, respondent No.2 fell down and Datta Renge ran away from that spot. After some time when Datta and one Sujay Baburao Renge again came there on motorcycle to see the respondent No.2, the petitioners again abused them. The aforesaid entire incident was witnessed by Ajay Baburao Renge and Narhari Narayan Renge. Respondents No.2 was then taken to Civil Hospital, Parbhani by his parents and thereafter respondent No.2 lodged the aforesaid F.I.R. against the petitioners.

5. In respect of Crime No. 54/2020, which is the subject-matter of Criminal Writ Petition No.841/2020,

respondent No. 2 has made allegations that his grandfather had got 15 Acres agricultural land in view of Ceiling Act and a dispute is pending in respect of the said land in Civil Court. According to respondent No.2, petitioner No.1 is cultivating the said land on Batai basis, and therefore, the petitioners are having grudge against him. On 05.04.2020 when he alongwith his cousin Vijay Bhagwan Mande and others had a party in his field at about 6.00 p.m., petitioner No.3, who was present in adjacent field, came there and abused them on the basis of their caste in filthy language as to why they were making noise. When respondent No.2 told petitioner No.3 that he was making noise in his field, petitioner No.3 threatened him of dire consequences. Thereafter on 07.04.2020 when respondent No.2 was going to Parbhani road for attending nature's call, petitioner No.2 came there and caught hold him by pressing his neck. Petitioner Nos. 1 and 3 also came there and petitioner No.3 beat him with fists on face and chest. Petitioner No.1 torn his shirt and also beat him with kicks and fists. All of them again abused him referring his caste and also threatened him to kill. At the relevant time, the persons present nearby namely Dattarao Narayan Renge, Vishnu Marotrao Bhalerao and Sujay Baburao Renge resolved the said dispute. As such,

respondent No.2 was constrained to lodge the aforesaid F.I.R. No. 54/2020 against the petitioners in Daithana Police Station on 08.04.2020 for the offences mentioned above.

6. Learned Counsel for the petitioners submits that both the aforesaid FIRs have been lodged by respondent No.2 against the petitioners out of civil dispute only and the incidents as alleged in those FIRs never took place. She further submits that respondent No.2 in order to settle the scores with Balaji Mandir in respect of land bearing Gut No.314 has made the present petitioners as scapegoat and to ensure that the petitioners should not raise any protest against him on his attempts to encroach the aforesaid land. Learned Counsel for the petitioners submits that land Gut No. 314 of Balaji Mandir Devasthan is being cultivated by petitioner No.1 under an agreement and since petitioner No.1 had made various complaints against respondent No.2 and his family members in respect of encroachment made by respondent No.2 and his family members over the said land, the present FIRs have been lodged by respondent No.2. Learned Counsel for the petitioners further submits that respondent No.2 has lodged both the FIRs with *mala fide* intention and as a counter blast to the complaints made by

petitioner No.1 against him. The petitioners have filed so many documents as to how they lodged various complaints against respondent No.2 in respect of the alleged encroachment committed on land Gut No. 314 of Balaji Mandir Devasthan by respondent No.2 and his family members. Learned Counsel for the petitioners also placed reliance on the following judgments :

- (i) Prashant Bharti vs. State (NCT of Delhi)*
(2013) 9 SCC 293
- (ii) Shafiya Khan @ Shakuntala Prajapati vs.*
State of U.P., 2022 SCC OnLine SC 167
- (iii) Rajiv Thapar & others vs. Madanlal Kapoor*
(2013) 3 SCC 330
- (iv) Vineet Kumar & others vs. State of Uttar Pradesh*
(2017) 13 SCC 369
- (v) Indian Oil Corpn. vs. NEPC India Ltd. & ors.*
(2006) 6 SCC 736.

7. On the contrary, learned Counsel for respondent No.2 strongly resisted the submissions made on behalf of the petitioners. He submits that respondent No.2 has made direct allegations against the petitioners in both the above-mentioned FIRs and the dispute over land Gut No. 314 as

alleged by the petitioners has nothing to do with the criminal acts of the petitioners in both the crimes. He further submits that when there are direct allegations in the FIR, then extraneous material relied upon by the petitioners cannot be considered. As such, he prayed for dismissal of both the petitions.

8. On the other hand, learned A.P.P. also argued in similar manner as that of learned Counsel for respondent No.2. Learned A.P.P. submits that the investigating machinery, after investigation, has filed charge-sheets in both the crimes and it has been revealed during the investigation that the petitioners not only hurled caste abuses, but also beat respondent No.2 severely. He pointed out that though F.I.R. being Crime No. 128/2020 which is the subject-matter of Criminal Writ Petition No. 839 of 2020 was initially registered for the offence punishable under Section 324 of I.P.C., but on investigation it has been revealed that the petitioners inflicted grievous injury to respondent No.2 and therefore, charge-sheet in the said crime has been submitted for the offence under Section 326 of I.P.C. Learned A.P.P. therefore prayed for dismissal of both the petitions.

9. We have carefully gone through the entire material on record including both the FIRs and charge-sheets alongwith police papers. We have also gone through the aforesaid judgments relied upon by the learned Counsel for the petitioners. Admittedly, in both these FIRs, respondent No.2 has made allegations against the petitioners that they beat him severely and also abused him in filthy language by referring his caste. On perusal of charge-sheet in respect of Crime No. 128/2020 in Criminal Writ Petition No. 839 of 2020, it is clearly evident that respondent No.2 has sustained grievous injury in form of fracture to his left wrist due to beating extended by the petitioners to him. Further, there are also other injuries in form of abrasion and blunt trauma over the chest of respondent No.2 which definitely supports the allegations made by him against the petitioners in the said crime. Similarly, in another Crime No. 54/2020, as per injury certificate, respondent No.2 has sustained blunt trauma on forehead and chest. Though the nature of those injuries is simple, but it corroborates the allegations made by respondent No.2 in the said F.I.R. Further, in both the crimes there are also eye witnesses who had seen the incident as stated by respondent No.2.

10. Learned Counsel for the petitioners heavily relied on the aforesaid judgments. On carefully going through the judgments in the cases of ***Prashant Bharti vs. State (NCT of Delhi)*** and ***Shafiya Khan @ Shakuntala Prajapati vs. State of U.P. (supra)***, it is evident that the Hon'ble Supreme Court has observed that when the defence material relied upon by the appellant - accused in support of his plea for quashing the proceedings found to be sound, reasonable and indubitable, sufficient to reject factual assertions contained in charges levelled against him and not refuted by complainant, proceedings can be quashed by invoking powers under Section 482 of Cr.P.C. It is also held by the Hon'ble Supreme Court that the proceedings can be quashed if the trial would result in abuse of process of court and would not serve ends of justice. However, these observations have come in the light of the observation of Supreme Court in the case of ***Rajiv Thapar and others vs. Madanlal Kapoor*** (supra). On going through the said judgment, it is evident that the Hon'ble Supreme Court laid down certain guidelines or steps to be considered for quashing of proceedings on the basis of defence material. The Hon'ble Supreme Court in para 30 of the said judgment has made the following observations :

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:

30.1. Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2. Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3. Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused”.

On perusal of the aforesaid steps, it has been abundantly made clear by the Hon'ble Supreme Court that if the defence material relied upon by the accused discloses certain facts which would render the allegations levelled by the complainant redundant then only the proceedings can be quashed.

11. Here in this case, the petitioners are claiming that petitioner No.1 is cultivating the land Gut No. 314 of village Jamb owned by Balaji Mandir Devasthan and since respondent No. 2 and his family members were obstructed by petitioner No.1 when they were illegally trying to encroach upon the said land, the present false FIRs have been lodged. Admittedly, the petitioners have filed various documents as their defence material on record to that effect. However, on perusal of the said documents, it appears that the present petitioner No.1 in both the petitions has been appointed to cultivate the said land Gut No. 314 of Balaji Mandir Devasthan under an agreement (Nokarnama) and that the petitioner No.1 and Priest of the said Balaji Mandir Devasthan have lodged various complaints before the various Authorities in respect of the alleged encroachment at the hands of respondent No.2 and his family members. The

petitioners are thus claiming that respondent No.2, to counter those complaints, has filed both these FIRs with concocted stories and taking disadvantage of his caste. However, we have already mentioned above that how respondent No.2 was beaten by the petitioners and in the result of that beating respondent No.2 had even sustained grievous injuries. As such, when there are direct allegations in the F.I.R. against the petitioners supported by medical evidence, then the steps mentioned in the aforesaid judgment cannot be applied for quashing the FIRs in question.

12. In the case of *State of Haryana and others vs. Ch. Bhajan Lal and others* reported in *AIR 1992 SC 604* the Hon'ble Supreme Court has already laid down the cases in which the Court can quash criminal proceedings and the sum and substance of the said judgment is that, when the allegations in the F.I.R. or the complaint even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then only F.I.R. can be quashed. Further, it has also been held by the Hon'ble Supreme Court in the said case that when the complaint containing serious allegations even if laid on account of personal animosity, not liable to be

discarded when the allegations are yet to be tested and weighed after the evidence is collected. In the instant case, we have already mentioned herein above that there are direct allegations against the petitioners in both the FIRs constituting a cognizable offence, and therefore, it would not be proper to quash the criminal proceedings in view of the tests laid down by the Hon'ble Supreme Court in the case of ***Rajiv Thapar vs. Madan Lal Kapoor*** (supra) without giving any opportunity to the prosecution to establish the same.

13. Learned Counsel for the petitioners also relied on judgments in the cases of ***Vineet Kumar and others vs. State of Uttar Pradesh and another*** and ***Indian Oil Corpn. vs. NEPC India Ltd. and others*** (supra) and submitted that respondent No.2 has filed both the above-said FIRs with *mala fide* intention and to settle the scores with Balajai Mandir Devasthan in respect of land Gut No. 314 which is being cultivated by present petitioner No.1 under an agreement. However, we have already discussed above as to how there are prima facie allegations against the petitioners supported by eye witnesses and medical documents and therefore, we are not inclined to hold, at this juncture, that the present FIRs are lodged by respondent No.2 with *mala fide* intention. For

that purpose a thorough trial is definitely needed. Even otherwise also, the Hon'ble Supreme Court in the case of ***State of Haryana vs. Ch. Bhajan Lal*** (supra) observed that when there are direct allegations in the FIR, then the *mala fides* cannot be considered for quashing the same. The Hon'ble Supreme Court in the recent judgment in ***Criminal Appeal No. 1455-1456 of 2021*** in the case of ***State of Odisha vs. Pratima Mohanty Etc.*** has observed in para 6.2 as under :

“6.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the charge sheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court”.

14. On going through the aforesaid observation, it has been made clear that while exercising power under Section 482 of Cr.P.C. the Courts are not required to go into the

merits of the allegations or evidence in detail as if conducting a mini-trial.

15. Considering all the above discussed aspects and in view of the observations made in the above-cited case, we find that there are direct allegations in both the FIRs lodged by respondent No.2 constituting a cognizable offence. Moreover, the allegations are also supported by statements of eye witnesses and respective medical documents. Thus, *prima facie* it appears that there is a triable case against the petitioners, and therefore, the First Information Reports being Crime No. 54/2020 and Crime No. 128/2020 cannot be quashed by exercising the powers under Section 482 of the Code of Criminal Procedure. With these observations we find that there is no substance in both the criminal writ petitions which are liable to be dismissed. Hence, we pass the following order.

ORDER

- (i) Criminal Writ Petition No.839 of 2020 and Criminal Writ Petition No. 841 of 2020 are hereby dismissed.
- (ii) Rule stands discharged.

- (iii) We quantify the fees of the learned appointed Counsel for respondent No.2 at Rs.2000/- (Rupees Two Thousand Only) each in both the petitions, to be paid by the High Court Legal Services Sub-Committee, Aurangabad.
- (iv) Both the Criminal Writ Petitions are accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)