

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 668 OF 2022

Dnyaneshwar Shivaji Ahire
and others.

....Petitioner

Versus

The State of Maharashtra and others

....Respondents

Ms.Rashmi S. Kulkarni, Advocate for the petitioners.

Mr.P.K. Lakhotiya, APP for the respondent/ State.

**CORAM : DIPANKAR DATTA, C.J. &
RAVINDRA V. GHUGE, J.**

DATED : JULY 07, 2022

PER COURT (Ravindra V. Ghuge, J.) :

1. The petitioners have put forth prayer clauses A, B and C as under :-

- "A) *Be pleased to quash and set aside the FIR bearing Crime No.165 of 2021 dated 21.09.2021 u/s 354, 324, 323, 294, 143, 144, 147, 427 of IPC registered with Mehunbare Police Station Jalgaon.*
- B) *Pending hearing and final disposal of the present writ petition direct the respondent No.1 not to take any coercive action against the petitioners.*
- C) *Pending hearing and final disposal of the present writ petition direct the respondent No.1 not to file chargesheet in the impugned FIR."*

2. We have considered the extensive submissions of the learned Advocate for the petitioners and the learned APP on

behalf of respondent No.1. We have perused the record with their assistance.

3. The petitioners claim to be belonging to the Buddha community residing in Bhimnagar Vasti, adjacent to the Jamda-Bahal Road. They claim that the Grampanchayat had allotted a place for construction of a platform upon which, they erected a Buddha Stambha. The family of respondent No.2 and others, have encroached upon the said place and have put up stalls. Complaints in this regard have been filed by the Buddha Community with the Grampanchayat Office. Respondent No.2 and her family members used to threaten the petitioners.

4. It is further canvassed that, the petitioners were threatened with desecration of the Buddha Stambha. A complaint was lodged with the Sub Divisional Police Officer, Chalisgaon voicing the threats held out by respondent No.2 and her family members. About 100 members of the petitioners' community signed the complaint.

5. On 21.09.2021 at around 09.00 AM, the family members of respondent No.2, accompanied by a large mob led by her husband, marched onto the houses of the petitioners. Stones were pelted. The mob was armed with deadly weapons and some of the members of the petitioners' community were assaulted causing bodily injuries. Caste based aspersions and

abuses were hurled at the petitioners in full public view. The husband of respondent No.2 assaulted petitioner No.6 causing bleeding injuries. His brother was also assaulted mercilessly. He fell unconscious. Thereafter, respondent No.2 and other ladies came out in the open, abused the petitioners and threatened them.

6. Petitioner No.6 registered an FIR bearing Crime No.164/ 2021 on 21.09.2021 with the Mehunbare Police Station for the offences punishable under Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sections 307, 324, 323, 338, 337, 298, 294, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and Sections 37(1) and 37(3) of the Maharashtra Police Act, 1951. It is alleged that the timing on the said FIR is manipulatively posted as 19.44 hours.

7. We find from the record that respondent No.2 herself registered an FIR bearing Crime No.165/2021 on 21.09.2021 in the same Police Station, Mehunbare, for the offences punishable under Sections 354, 324, 323, 294, 143, 144, 147 and 427 of the Indian Penal Code. The time of registering of the FIR is 21.43 hours. It is set out in the said FIR that, on 21.09.2021 at around 09.30 AM, petitioner No.1 abused her in foul and filthy language. He was joined by petitioner

Nos.2 to 12, who made sexual comments, called her a prostitute, held out threats of physical harm and made casteist remarks in full public view. Thereafter, all the ladies slapped and beat her. Her necklace worth 10 grams of gold broke off and she lost it. All these petitioners, including the male persons, held her hands and dragged her. They touched her body parts and outraged her modesty. Being an Asha worker, the ladies accompanying her, heard her screams and rushed to rescue her. Her husband also came to the place of incident along with some of the community members. However, they were assaulted by the petitioners with iron rods and bricks. The injured persons were carried to the Rural Primary Health Centre at Mehunbare and after treatment, they were taken to the Civil Hospital at Dhule for further treatment. One of them was still in the hospital when the informant/ respondent No.2 and her husband reached the Police Station.

8. The learned advocate for the petitioners has strenuously canvassed the theory of a counterblast to the FIR No.164/ 2021 registered by petitioner No.6 (Aba Bapu Mahale). It is contended that a false FIR has been registered only because an FIR was registered against respondent No.2, her husband and others. It is prayed that as the petitioners have filed the FIR earlier in point of time, FIR No.165/2021 filed by

respondent No.2 deserves to be quashed.

9. We find that, practically, in all matters under Article 226 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure, 1973, the accused approach the Court on the ground that the First Information Report (F.I.R.), on the face of it, does not disclose ingredients that would constitute a cognizable offence. Thus, the inherent power of the High Court, in its jurisdiction under Section 482, is invoked for seeking the quashing of the F.I.R..

10. In ***C.B.I. vs. Tapan Kumar Singh, (2003) 6 SCC 175 : AIR 2003 SC 4140***, the Honourable Supreme Court has held in paragraph 22 that *"The law does not require the mentioning of all the ingredients of the offence in the FIR. It is only after completion of the investigation that it may be possible to say whether any offence is made out on the basis of the evidence collected by the investigating agency."* It is observed that an FIR is not an encyclopedia which must disclose all the facts and details relating to the offence alleged to have been committed. It requires no debate that an FIR is merely a report by the informant about the commission of a cognizable offence and it cannot be ruled out that minute details may not be mentioned. It cannot be ignored that an FIR pertains to an offence, which is alleged to have been committed and the

informant, in a disturbed state of mind and shaken on account of a serious offence committed, approaches a police station for recording an FIR.

11. In the ***State of Punjab vs. Dharam Singh, 1987 SCC (Cri.) 621 : 1987 Supp. SCC 89***, the Honourable Supreme Court held that the High Court had erred in quashing the FIR by going beyond the averments, to consider the merits of the case even before the investigating agency has embarked upon the legal exercise of collecting evidence.

12. In ***Kurukshetra University vs. State of Haryana, (1977) 4 SCC 451 : AIR 1977 SC 2229 (a Three Judges Bench)***, the Honourable Supreme Court has observed thus:-

"It surprises in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482, Criminal Procedure Code, it could quash an FIR. The Police had not even commenced investigation into the complaint filed by the warden of the University and no proceeding at all was pending in any Court in pursuance of the FIR. It ought to be realized that inherent powers do not confer any arbitrary jurisdiction on the High Court to act according to its whim or caprice."

13. In ***Geeta Mehrotra and another vs. State of Uttar Pradesh and another, (2012) 10 SCC 741***, the Honourable Supreme Court has held that in the absence of any specific allegation in an FIR, prima facie, indicating no case against the co-accused, the Court would have the power to

quash an FIR.

14. In ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others vs. State of Gujarat and another, (2017) 9 SCC 641***, the Honourable Supreme Court has laid down the guiding principles to be considered in determining whether an FIR could be quashed, as under:-

- "(1) *Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.*
- (2) *The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.*
- (3) *In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.*
- (4) *While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court.*
- (5) *The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.*

- (6) *In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.*
- (7) *As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.*
- (8) *Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.*
- (9) *In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*
- (9) *There is yet an exception to the principle set out in propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”*

15. Considering the crystallized position of law, we are of the view that we cannot venture into a fact finding exercise or conduct a parallel investigation while considering the petition invoking Section 482 of the Code of Criminal Procedure and Article 226 of the Constitution of India. It is for the investigating agency to investigate into the FIR and based on the documentary record collected during investigation, to file a charge sheet against the accused or hold that there is no material against them.

16. Considering the law and the allegations set out in the impugned FIR, we are of the view that both the FIRs need to be investigated into. Prima facie, an offence has been made out by the contents of the FIR No.165/2021 and hence, we do not find that this case deserves to be entertained.

17. In view of the above, this Criminal Writ Petition stands dismissed.