

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

CRIMINAL APPLICATION NO.1339 OF 2021

- 1) Annasaheb S/o Janardhan Wagh,
Age-58 years, Occu:Service,
- 2) Balbhim S/o Sahebrao Wagh,
Age-61 years, Occu:Pensioner,

**(Application of Applicant Nos.1 and 2
is dismissed as withdrawn as per Court's
order dated 02/07/2021)**

- 3) Amol S/o Sopan Wagh,
Age-35 years, Occu:Agril.,
- 4) Pravin S/o Sanjay Wagh,
Age-20 years, Occu:Agril.,

All R/o-Wagh Vasti, Jawkhede Kh.,
Tal-Pathardi, Dist-Ahmednagar.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Pathardi Police Station,
Tal-Pathardi, Dist-Ahmednagar,
- 2) Kalimbi W/o Mohammad Shaikh,
Age-40 years, Occu:Household,
R/o-Wagh Vasti, Jawkhede (Kh),
Tal-Pathardi, Dist-Ahmednagar.

...RESPONDENTS

...
Application of Applicant Nos.1 and 2 is dismissed
as withdrawn as per Court's order dated 02/07/2021.
Mr. R.S. Kasar Advocate for Applicant No.3 and 4.
Mr. S.D. Ghayal, A.P.P. for Respondent No.1.
Mr. S.R. Andhale Advocate for Respondent No.2.
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**CORAM: SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 3rd AUGUST, 2022

ORDER :

1. By filing this Application under Section 482 of the Code of Criminal Procedure, the applicants intend to quash the First Information Report (in short "FIR") and the proceedings against them. It will not be out of place to mention here that by order dated 2nd July 2021 passed by this Court, the application stood dismissed as withdrawn as against applicant Nos.1 and 2 and, therefore, the matter is now proceeded for applicant Nos.3 and 4 only.

2. Heard learned Advocate Mr. R. S. Kasar for the applicants, learned APP Mr. S. D. Ghayal for respondent No.1 – State and learned Advocate Mr. S. R. Andhale for respondent No.2.

3. Respondent No.2 – original informant has lodged FIR vide Crime No.387 of 2021 with Pathardi Police Station, District-

Ahmednagar against all the accused persons alleging that they have committed offence punishable under Sections 354, 452, 323, 504, 506 read with Section 34 of Indian Penal Code in the incident that had allegedly taken place at about 5.00 to 5.30 p.m. on 6th June 2021.

4. Perusal of the FIR would show that it has been lodged three days after the incident and in lodging the FIR there is some delay, however, since it is explainable even at the time of trial and, therefore, that cannot be the ground to quash the FIR. Respondent No.2 has stated that original applicant No.1 is residing in the neighbouring Vasti and he used to harass her. At about 5.00 p.m. on 6th June 2021, she was sleeping with her grand-son and her two daughters-in-law had gone to the field, at that time, applicant No.1 entered her house and outraged her modesty. In the FIR, she has further stated that after taking objection, the informant went outside the house and started raising voice. At that time, other accused persons including present applicant Nos.3 and 4 went there. Applicant No.2 – accused also outraged her modesty by uttering the words and all of them had allegedly started abusing her. She then states that applicant No.3 had assaulted her by kicks and fists and gave threats. She states that she was under mental shock and then

she lodged the FIR. Thus, it is to be noted that a specific act is attributed to applicant No.3 in the FIR, but there is no specific act attributed to applicant No.4 though his presence has been stated.

5. Now, the investigation is over and charge-sheet has been filed. Perusal of the FIR would show that statements of two witnesses, who are the daughters-in-law of the informant as well as statement of the informant under Section 164 of the Code of Criminal Procedure, are recorded. Two daughters-in-law of the informant, in their statements under Section 161 of the Code of Criminal Procedure, stated that they had gone for agriculture work around 3.00 p.m. in their field and after hearing noise of their mother-in-law, they returned to home. At that time, they found all the four applicants present near the house and it is stated that they were all abusing the informant. Applicant No.3 was assaulting the informant by kicks and fist blows and threatening her and thereafter, the accused left. Rest was then disclosed to them by their mother-in-law. Thus, they have also not stated any specific role of applicant No.4. In her statement under Section 164 of the Code of Criminal Procedure, the informant specifically stated about entering of applicant No.1 inside the house and, thereafter, she ran outside the house

raising voice and then other three accused came and then in general, it is stated that they had assaulted her by kicks and fist blows. Therefore, the said omnibus statement cannot be considered when it is deviating to the extent of applicant No.4 as compared to her FIR. Perusal of all the said statements and the FIR would show that applicant No.4 had never entered the house of the informant. He had not outraged her modesty. He had not assaulted her. He had not threatened her. It is only stated that he had abused. No specific abuses have been stated. Mere use of word "abuse" will not attract the ingredients of Section 504 of the Indian Penal Code. So also, mere presence will also not so infer. Under such circumstance, as against applicant No.4, there is no evidence. It would be an abuse of process of law to ask him to face trial with such kind of evidence and, therefore, the Application deserves to be allowed in respect of applicant No.4.

6. However, as regards applicant No.3 is concerned, specific role has been attributed and, at this stage, it can be said that it is covering offence under Section 323 and 506 of the Indian Penal Code. Therefore, no case is made out for quashment of FIR as well as proceedings against applicant No.3. Hence, the following order :-

ORDER

(I) Application stands partly allowed.

(II) Application has been already withdrawn in respect of applicant Nos.1 and 2.

(III) Application stands rejected in respect of prayers for applicant No.3 – Amol s/o Sopan Wagh.

(IV) Application stands allowed in respect of applicant No.4 – Pravin s/o Sanjay Wagh. The First Information Report vide Crime No.387 of 2021 dated 9th June 2021 registered with Pathardi Police Station, Taluka-Pathardi, District-Ahmednagar for the offence punishable under Sections 354, 452, 323, 504, 506 read with Section 34 of the Indian Penal Code, so also the consequent proceedings bearing R.C.C. No.128 of 2022 pending before the learned Judicial Magistrate First Class, Pathardi, Dist. Ahmednagar, stand quashed and set aside to the extent of applicant No.4.

(V) Application stands disposed of, accordingly.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE