

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

CRIMINAL APPLICATION NO. 1798 OF 2020

Asaram s/o. Dagdu Darekar
Age 83 years, Occ. Agril.,
R/o. Darekar Wasti, Walunj,
Bazburdi Ghumat, Ahmednagar,
Tq. and Dist. Aurangabad.

.... Applicants

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Nagar Taluka Police Station,
District Ahmednagar.
2. Santosh Purannath Kale
Age. 30 years, Occ. Labour,
R/o. Walunj, Tq. Nagar,
Dist. Ahmednagar.

.... Respondents

Advocate for Applicant : Mr. D.R. Jaybhar.
APP for Respondent No. 1 : Mr. S.D. Ghayal,
Adv. For respondent No.2 : Mr. Ram B. Deshpande.

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

DATE : 19th 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. 722 of 2020 registered at

Nagar Taluka Police Station, Ahmednagar under Sections 304 r/w. 34 of IPC and Section 3(1)(r)(va) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

A. FACTS :

2.1] The informant/respondent No. 2 – Santosh Purannath Kale R/o. Walunj, Taluka Ahmednagar has filed FIR. It states that he is resident of Walunj, Taluka and Dist. Ahmednagar and he resides with Wife – Mitali, Mother Alka, Father Purannath and others. All of them do labour work.

2.2] On 2.9.2020 at about 12.00 a.m. his cousin – Yash and Niece Arpita had been vaccinated and so for the purpose of applying ice on the paining area, he alongwith his brother Pravin were going to the shop of Jaya Darekar. At that time, one Asaram Dagdu Darekar called his brother Pravin while he was passing nearby the Tea Stall of Akshay More. Therefore, both of them went there. At that time, Asaram Darekar and Anil Raosaheb Dalvi were making shed for vegetable stall/tapri. They, therefore, asked Pravin to climb on the Tapri and by taking aid of the iron angle which they had placed there for shed, they asked him to push the wire on the electric pole. Accordingly, Pravin climbed on the tapri head. Thereafter, Asaram Dagdu gave him a knife for cutting a rope. Accordingly, Pravin cut off the rope but he informed that a electric wire is also tied to it and it could not be cut. Therefore, Anil Dalvi gave another hand tool (पकड). After giving that tool, Pravin cut off the wire and removed the angle. At that time Asaram and Anil asked Pravin to push the electric wire on the electric pole. When Pravin tried to push the electric wire, he fell on the ground due to electric shock. The

complainant went near him but he did not reply. Therefore, he suspected that Pravin might have died due to electric shock.. Accordingly, the FIR in question, bearing No. 722/2020 dated 3rd September 2020 came to be lodged.

2.3] The present application is filed for quashing of FIR and resultant criminal proceeding bearing Special Case No. 31 of 2021 pending before the Sessions Court, Ahmednagar. The applicant is 83 years old person, who owns three shops and had given these shops on rent, which fetch him enough income, therefore, there was no need for applicant to sell vegetables. During the day of unfortunate incident, District Administration had placed prohibition on movement of persons after 5 p.m., therefore, there was no question of applicant going out of his home at 5:45 p.m. The applicant being senior citizen remained in his home due to fear of being infected by Covid-19. There is unexplained delay of 24 hours in lodging FIR. The distance between place of incident and applicant's residence is about 15 Kms, and applicant being vulnerable remained in his home. Therefore, the applicant is falsely implicated in the FIR.

B. SUBMISSION OF PARTIES :

3] Heard Mr. D.R. Jaybhar. Advocate for the applicant and Mr. S.D. Ghayal, learned APP for the State.

4] Mr. Jaybhar, learned counsel for the applicant submitted that so far as offence under Section 304 r/w. 34 is concerned, there was COVID-2019 pandemic on its peak when the offence is alleged to have been committed. Therefore, there was restricted movement of persons

after 5.00 p.m. Till 30.9.2020 and hence, according to Mr. Jaybhar it is unlikely that applicant came out at 5.45 p.m. He submits that as per the FIR, the applicant was making arrangement for selling vegetables, which is absolutely false and incorrect because the applicant already owns three shops and given it on rent. Therefore, he was not selling any vegetable. As such, a false FIR has been filed against the applicant, which deserves to be quashed and set aside.

5] Mr. Jaybhar further submitted that, in fact, it was complainant Pramod who runs an unauthorized pan stall near Walunj Phata namely Nisarg Pan Stall. There is a high max light pole next to his Pan stall. It was complainant Pramod who made deceased to climb on that pole and during that exercise deceased Pravin got electric shock and died on the spot. Applicant was neither present there nor given any instructions to the deceased. The impugned FIR, therefore, deserves to be quashed and set aside.

6] Learned APP – Mr. Ghayal, on the other hand, submitted that specific allegations have been made against all the applicant, hence there is no question of quashing of FIR and criminal proceedings. The application may therefore be dismissed.

C. ANALYSIS :

7] We have perused the record. If we peruse the FIR, the complainant has stated that when the deceased and his brother were going from the road, the applicant – Asaram Darekar and Anil Dalvi asked the deceased to climb on the roof of the Tapri like shed of their shop and asked him to push the wire and in the process he suffered

electric shock and died.

8] On perusal of the FIR, prima facie, so far as the offence punishable under section 304 of IPC is concerned, there is material against the applicant. Of course, the prosecution will have to prove the guilt of the accused beyond all reasonable doubt, but that will be possible after regular trial. We are therefore not inclined to quash the FIR so far as offence under Section 304 of IPC is concerned.

9] 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.

10] The Apex Court in various judgments 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, the same be used.

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

12] Now if we see the contents of the FIR, there is nothing to indicate that the applicant did intentionally insult or intimidate with intent to humiliate in any place within public view. Nor there is anything to suggest that he was knowing that the deceased was member of a Scheduled Caste or Scheduled Tribe and therefore, he intentionally put his life in danger. Thus, none of the ingredient of the aforesaid two provisions, viz. 3(1)(r) and 3(2)(va) of the SC and ST (Prevention of

Atrocities) Act, are attracted against the applicant.

13] Considering the above aspects of the matter, we are of the considered opinion that this is a fit case wherein we should exercise our discretionary powers under Section 482 of Cr.P.C. only in respect of the offence under Section 3(1)(r) and 3(2)(va) of the SC and ST (Prevention of Atrocities) Act is concerned.

14] In that view of the matter, the we are inclined to partly allow the application.

ORDER

[a] The criminal application stands partly allowed.

[b] The FIR , so far as the offence under Section 3(1)(r) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 stands quashed and set aside.

[c] Matter to proceed so far as offence under Section 304 r/w. 34 of IPC.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

grt/-