

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

CRIMINAL APPLICATION NO.1849 OF 2021

**SANDEEP UMAKANT MANDADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for the Applicants : Mr. D. M. Shinde
APP for the Respondent No.1 – State : Mr. K. S. Patil
Advocate for Respondent No.2 : Ms. Shital E. Waghmare

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

DATE : 17th FEBRUARY, 2022.

PER COURT :

1. Heard finally with the consent of the parties, at the admission stage.
2. The applicants – accused are seeking quashing of the FIR bearing Crime No.226/2021, registered with Aakhada Balapur Police Station, District Hingoli, for the offences punishable under Sections 327, 323, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code.
3. The learned counsel for applicants submits that the husband of respondent No.2 informant has sold 2 Gunthas of land

out of the land bearing Gat No.391 to the father of applicant Nos. 1 and 2 herein, namely Umakant Mandade. The learned counsel submits that there is a dispute in respect of the said land. Consequently, applicant Nos. 1 and 2 along with their mother Rukhminabai and one another brother Maloji instituted Regular Civil Suit No.25/2021, against husband of respondent No.2 and one another person, for decree of perpetual injunction before the Civil Judge, Junior Division, Kalamnuri, and also filed application for issuance of temporary injunction. Though the said application seeking order of temporary injunction was heavily contested, the learned Civil Judge, Junior Division, Kalamnuri, by order below Exhibit-5, dated 02-07-2021, restrained the defendant (husband of respondent No.2 herein) from interfering and obstructing peaceful possession of the plaintiffs in the said suit. The learned counsel submits that, even if that order of temporary injunction is ignored, the charge under Section 327 is not attracted. There are no allegations that the applicants in any manner allegedly committed offence for extorting the property, as contemplated under Section 327 of the Indian Penal Code. The learned counsel submits that, in respect of the incident occurred on the same date, time and place,

applicant No.1 Sandeep has lodged complaint in the concerned police station against respondent No.2 informant herein and her family members, for the offences punishable under Sections 143, 147, 148, 149, 324, 323, 294, 504 and 506 of the Indian Penal Code. On the basis of his complaint Crime No.214/2021 came to be registered in the same police station. The complaint of the applicants is earlier in time, however, respondent No.2 informant has lodged complaint belatedly to counter the complaint. The learned counsel submits that the applicants have been falsely implicated in connection with the present crime.

4. The learned advocate for respondent No.2 submits that names of the applicants are mentioned in the FIR. The applicants have formed an unlawful assembly and in prosecution of common unlawful object of said assembly, assaulted respondent No.2 informant and the other family member. Even they have sustained injury in the said assault. The learned counsel submits that if the charge under Section 327 is not attracted as contemplated by the learned counsel for applicants, the applicants are free to raise such objection at the time of framing of the charge. However, the

allegations in the FIR are prima facie sufficient to attract charge under Section 327 of the I.P.C. There is a triable case against the applicants. There is no substance in the criminal application and the same is liable to be dismissed.

5. We have also heard the learned APP for State. The learned APP submits that respondent No.2 informant and other two persons namely Ramaji and Vitthal have sustained injury in the said incident and there are medico legal certificates in the police papers indicating the injuries on their person. The learned APP submits that investigation is still going on and the charge sheet is not yet filed. The learned APP submits that there are independent eye witnesses to the incident and in view of the same this application is liable to be dismissed.

6. We have carefully gone through the allegations made in the complaint, it appears that in respect of the same incident the parties have filed complaint against each other. There was almost a free fight between the members of the two families. Though there is enmity on account of the civil dispute, however, the same is a double edged weapon. The false complaint can be lodged on

account of the said enmity or even the incident, may happen as alleged in the complaint due to the said enmity on account of the civil dispute. It is for the trial Court to decide both the cases by recording the findings as to who is the aggressor and who is the defender. However, at this stage, we cannot conduct mini trial to find out as to who is aggressor and who is defender.

7. So far as the charge under Section 327 is concerned, it is open for the applicants to raise appropriate objection at the time of framing of the charge and it is for the trial Court to consider the same on its own merits. Further more, in terms of the observations made in the case of ***State of Haryana and others vs. CH. Bhajan Lal and others, reported in (1992) AIR (SC) 604***, if the allegations are clear-cut the mala fides cannot be taken into consideration.

8. In para 111 the Supreme Court has observed that, “*it is a well established proposition of law that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant*”.

9. In the instant case, as pointed out by the learned APP there are eye witness to the incident and further the informant and two witnesses from the family of the informant have sustained injuries in the alleged incident. There are medical legal certificates in the police papers.

10. The Hon'ble Supreme court in Criminal appeal Nos. 1455-1456 of 2021 (*State of Orisha vs. Pratima Mohanty etc.*) decided on 11.12.2021 in par 6.2 has made the following observations:-

“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 chargesheet 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.”

11. It is, thus, clear that this Court is not required to go into merits of the allegations and/or evidence in detail as if conducting the mini-trial. The power of quashing should be exercised sparingly and with circumspection and in rare case. There is a triable case against the applicants. In view of the same we are not inclined to entertain this criminal application seeking quashing of the FIR and hence, we proceed to pass following order:

ORDER

Criminal application is hereby dismissed.

(SANDIPKUMAR C. MORE)
JUDGE

(V. K. JADHAV)
JUDGE