

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

CRIMINAL WRIT PETITION NO.1113 OF 2021

**AVINASH BALASAHEB GORE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

. . .

Advocate for Petitioners : Mr. Shashikant E. Shekade
APP for Respondent – State : Mr. B. V. Virdhe
Advocate for Respondent No.2 : Mr. Z. H. Farooqui h/f. Mr. N. V. Gaware

. . .

**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

DATED : 10 OCTOBER 2022

PER COURT :

Heard learned advocate for the petitioners, learned APP and learned advocate for respondent No.2.

2. Petitioners are seeking quashment of criminal case being R.C.C. No.772 of 2020, registered at the instance of respondent No.2's FIR No. 804 of 2020 for the offences punishable under section 323, 324, 326, 504 and 506 read with section 34 of Indian Penal Code.

3. The sum and substance of the allegations in the FIR is to the effect that the informant is a building contractor. He has carried out construction of a building for the petitioner no.1 and was claiming the consideration. It is alleged that on 13 September 2020 at about 6.00 pm., the

respondent no.2 was called by petitioner Nos.1 and 2 to settle the accounts. When the dispute arose between them as to the rate at which the payment was to be made and on respondent no.2 insisting to be paid according to his assessment, the petitioners allegedly assaulted him. They also threatened him of dire consequences and refused to pay him. The informant got injured and was taken to Dr. Kalamkar Hospital for treatment. The petitioners were arrested and in the due course of time the charge-sheet was filed.

4. Learned advocate for the petitioners would submit that all the material allegations are only against the petitioner nos.1 and 2 who have already withdrawn their request for quashment. There are no specific and precise allegations against the petitioner nos.3 and 4. They are women and there are no criminal antecedents. Even the witnesses have not attributed them any specific and precise role. They are being implicated on omnibus allegations and the case be quashed.

5. Learned APP and learned advocate for respondent no.2 submit that the names of petitioner nos.3 and 4 appear in the FIR as also in the statement of witnesses recorded under section 161 of Criminal Procedure Code. They have taken part in the crime. They along with the other accused - petitioner nos.1 and 2, have abused and threatened the informant. The charge-sheet has been filed, meaning thereby the Investigation Officer has collected the material sufficient to implicate them and in view of the material

available against petitioner nos.3 and 4, the petition be dismissed.

6. Having considered the rival submissions and having perused the FIR as also the statements of witnesses, it is quite apparent that the incident had taken place on the spur of moment. There was no premeditation or design. It is only when the informant had been to the petitioner nos.1 and 2 to claim his dues that some altercation seems to have taken place resulting in the petitioner nos. 1 and 2 assaulting the informant.

7. As is mentioned hereinabove, the petitioner nos.1 and 2 have already withdrawn their request for quashment. So far as the petitioner nos.3 and 4 are concerned, though their names appear in the FIR as also statements of the witnesses, no specific and exclusive role is attributed to them much less in carrying out the assault which has resulted in injuries to the informant. By referring all the applicants collectively they are stated to have abused and threatened the informant. Even the witnesses who are stated to be the eye witnesses, namely, Sanjay Dattatray Khendake and Sharad Vishnu Gore are equally vague while attributing a specific role to the petitioner Nos.3 and 4.

8. When, admittedly, the incident has occurred on account of some civil dispute and when no specific and exclusive role is attributed to the petitioner nos. 3 and 4, following the principles laid down in the matter of *State Of Haryana And Ors. Vs Bhajan Lal; AIR 1992 SC 604*, it would be a

sheer abuse of process of law if the petitioner nos.3 and 4 are made to face the criminal case on the basis of the aforementioned facts and circumstances.

9. We allow the writ petition to the extent of petitioner nos.3 and 4 and quash and set aside the R.C.C. No.772 of 2020 qua them.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)