

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

944 CRIMINAL REVISION APPLICATION NO.129 OF 2021

SATISH PANDURANG RAJPURE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Shri Rajendra G. Hange
APP for Respondent-State : Shri G.O.Wattamwar

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CORAM : M.G.SEWLIKAR, J.

DATE: 3rd March, 2022

PER COURT:-

1. By this revision application, applicants have prayed for clubbing of Sessions Case Nos.171 of 2014 and 172 of 2014 arising out of Crime Nos.53 of 2014 and 52 of 2014 respectively.

2. Facts leading to this application are that Crime No.52 of 2014 came to be registered on the First Information Report (FIR) of Ashok Vasant Nemane (informant for short) alleging therein that on 18th April 2014 at 06:00 p.m. informant had been to Mahendrawadi. In the night of 18th February 2014 i.e. at 03:00 a.m. on 19th February 2014, he was jostled by one Kishor Pandurang Rajpure. On 19th April 2014 at 08:30 p.m., he went to the house of Khandu Devrao Rajpure at Garmatha. Accused Satish Pandurang Rajpure, Kishor Pandurang Rajpure, Gokul

Lawande, Aba Lahu Saste, Bapu Baban Rajpure, Pandurang Bajirao Rajpure came there armed with sticks and exhorted him to come out of the house. Khandu Rajpure pushed the informant in the house and locked the house from outside. Bapu Baban Rajpure assaulted Santosh Chavan and took him on the road where a crowd of 50 to 60 people had assembled. They were pelting stones on the room in which he was locked. He made a call to Ganesh Bamdale, Anand @ Pintu Shet Jadhav, Deepak Jadhav and requested them to inform the Police. A little while later, Police came there. Informant was brought out of the house. When he boarded the Police Van and was leaving the place, at that time, he noticed that Santosh was tied to a pillar in front of house of Pandurang Rajpure and he was beaten by Bapu Rajpure, Satish Rajpure and Pradeep Rajpure by means of sticks. Police rescued Santosh. These three persons were jostling the Police. Crowd started pelting stones on the Police Van. Assistant Police Inspector Gurame asked as to where Govardhan Tukaram Misal (Police Naik) was. They noticed that Govardhan Tukaram Misal (Police Naik) was tied to a Onion Shed and he was severely beaten. On these allegations, report came to filed on the basis of which Crime No.52 of 2014 came to be registered with Patoda Police Station, District Beed under Sections 143, 147, 148, 149, 364, 307, 336, 337 of the Indian

Penal Code. Investigation was carried out and charge-sheet was submitted vide Sessions Case No.172 of 2014.

3. On 20th April, 2014, Govardhan Tukaram Misal (Police Naik) lodged the FIR alleging therein that on 19th April, 2014 at 09:45 p.m., Police got the information that Santosh Chavan was tied to a pillar. When the Police went there, they found that 10 to 12 people were beating Santosh and Santosh was tied to a pillar. Police rescued Santosh and they were taking him in a Police Van. Crowd was yelling that Santosh be handed over to them. They started pelting stones on the Police Van. Satish Rajpure, Kishor Rajpure and Pandurang Rajpure were the persons who were in the crowd. Other 50-60 members of the crowd were unknown to him. On these allegations, Crime No.53 of 2014 came to be registered with the Patoda Police Station, District Beed under Sections 143, 307, 364, 353, 332, 336, 337 of the Indian Penal Code. After completion of investigation, charge-sheet came to be filed vide Session Case no.171 of 2014.

4. The applicants had filed application Exhibit 49 before the learned Additional Sessions Judge for clubbing of aforesaid two cases. The learned trial Court rejected the application stating that these two cases are not connected with each other.

This order is impugned in this revision.

5. Heard Shri R.G.Hange, learned counsel for the applicants and Shri G.O.Wattamwar, learned APP for the respondent-State.

6. Shri Hange, learned counsel for the applicant submits that both the First Information Reports arise out of the same incident. He submits that the FIR dated 19th April 2014 shows that the incident took place on 19th April 2014 at 08:30 p.m. The said FIR also shows that Santosh Chavan was tied to a pillar and he was being beaten by the crowd. Same allegations are found in the second FIR dated 20th April, 2014. Therefore, both the First Information Reports lead to the same incidents and second charge-sheet ought not to have been filed on the basis of second FIR. He submits that therefore, both the cases need to be clubbed. For this purpose, he placed reliance on the case of *Rajat Kalyan and Another Vs. State of Goa and Others [2021 ALL MR (Cri.) 3981]*. He submits that both these cases are pending before the same Court.

7. Learned APP for the respondent-State submits that both the incidents are distinct. Therefore, consolidation is not a remedy. Both the cases should be tried separately.

8. The contents of both the First Information Reports have been narrated in detail above. The FIR in Crime No.52 of 2014 makes it explicitly clear that the incident in second FIR was covered in the incident of first FIR i.e. Crime No.52 of 2014 . In the first FIR, it is clearly mentioned that Santosh Chavan was tied to a pillar and he was being beaten by accused. It is seen in the second FIR also that when Police reached the scene of the offence, they found Santosh Chavan tied and he was being beaten by 10-12 people. Thus, the incident in both the First Information Reports is the same. Therefore, there was no occasion for filing second FIR. Therefore, there is no propriety in trying two cases separately. In the case of *Rajat Kalyan and Another* (supra) a similar question had fallen for consideration before the Hon'ble Division Bench of this Court.

"8. We have considered the submissions of the learned counsel and also perused the contents of the two FIRs and the chargesheets. On such perusal, we are satisfied with the sameness of the allegations in the two FIRs. In any case, the alleged offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR. In precisely such a case, the Hon'ble Supreme Court in Amitbhai Shah (supra) relied upon by Mr. Bhobe, holds that the second FIR will be impermissible in law. The decisions relied upon by Mr. De Sa hold that the second FIR in respect of the same offence or even different offences committed in the course of the same transaction is not just impermissible, but violates Article 21 of the

Constitution. The Hon'ble Supreme Court has held that this principle was laid down in T. T. Antony (supra) and has never been diluted in subsequent judicial pronouncement even while carving out exceptions."

9. In this case also there are sameness of allegations in both the FIRs. Therefore, there is no propriety in allowing two criminal cases to proceed. In this view of the matter, I am inclined to allow the application. Therefore, following order is passed :-

ORDER

- (i) Criminal Revision Application is allowed.
- (ii) The proceedings of Sessions case No.171 of 2014 be clubbed in the proceedings of Sessions case No.172 of 2014.

(M.G.SEWLIKAR)
JUDGE

SPT