

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL APPLICATION NO.2864 OF 2019

- 1 Mujahid Ajij Khan,
 Age 35 yrs., Occ. Business,
- 2 Wahid Ajij Khan,
 Age 32 yrs., Occ. Business,
- 3 Ajij Rajjak Khan,
 Age 61 yrs., Occ. Business,
- 4 Ayub Rajjak Khan,
 Age 48 yrs., Occ. Driver,
 All are r/o Sayyud Baba Chowk,
 Sangamner, Tq. Sangamner,
 Dist. Ahmednagar.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
 Through Police Inspector,
 Sangamner City Police Station,
 Tq. Sangamner, Dist. Ahmednagar.
- 2 Shaikh Allabaksh Fakir Mohd. Shaikh,
 Age 73 yrs., Occ. Business,
 R/o Main Road, Sangamner,
 Tq. Sangamner, Dist. Ahmednagar.

... Respondents

...

Mr. S.S. Dixit, Advocate for applicants

Mr. M.M. Nerlikar, APP for respondent No.1

Mr. K.H. Dongre, Advocate for respondent No.2

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 15th DECEMBER, 2022

ORDER :

1 By invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 the applicants have prayed for quashment of the First Information Report which came to be registered way back in the year 2006 vide Crime No.56/2006 dated 17.04.2006 with Sangamner City Police Station, Tq. Sangamner, Dist. Ahmednagar against them at the behest of respondent No.2, for the offence punishable under Section 323, 324, 504 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. S.S. Dixit for applicants, learned APP Mr. M.M. Nerlikar for respondent No.1 and learned Advocate Mr. K.H. Dongre for respondent No.2.

3 At the outset, it is to be noted that since 2006 though the First Information Report was filed charge sheet was not filed and it appears that after the present petition was filed when the notice was issued to respondent No.1 the things moved and even the inquiry was made. It was found that

Police Head Constable Mr. Dipak Aware who was conducting the investigation, had not done his duty. It was his duty to file the charge sheet, however, he had not given charge to anybody when he was then transferred. It is stated that offence under Section 217 of the Indian Penal Code has been registered against PHC Mr. Dipak Aware, who thereafter appeared to have been retired. That offence came to be registered vide Crime No.445/2021 on 30.08.2021. Important point to be noted is that now there are no much documents available with the Police Station. Respondent No.1 has not produced any document showing that hurt was caused with dangerous weapon, so as to attract offence under Section 324 of the Indian Penal Code. Copy of the First Information Report has been produced, which shows the allegations that the applicants had assaulted by kicks and fists and abused. It is stated that accused Wahid had stick and he had given blow to the son of informant on the left ear. As regards others are concerned, it is stated that they had assaulted the other persons with fists. The stick cannot be said to be weapon of shooting, stabbing, cutting etc. and, therefore, prima facie Section 324 of the Indian Penal Code cannot be said to be attracted. The rest are non cognizable offences. Under such circumstance, though we have also heard the learned APP on the point of limitation, however, we do not want to enter into that arena, in view of the fact that on the merits there is no such material by which the applicants should be asked to face the trial. It is a

pitiable situation that though the offence came to be registered in 2006 not even the charge sheet was filed till 2021 and then the offence was required to be lodged against the Investigating Officer itself. The applicants need not be asked to face such trial, wherein in fact, their own rights have been jeopardized. Hence, following order.

ORDER

1 Application stands allowed.

2 The First Information Report vide Crime No.56/2006 dated 17.04.2006 registered with Sangamner City Police Station, Tq. Sangamner, Dist. Ahmednagar, for the offence punishable under Section 323, 324, 504 read with Section 34 of the Indian Penal Code, 1860 stands quashed and set aside.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)

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