

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

CRIMINAL WRIT PETITION NO.1274 OF 2021

1. Pushpa Anil Jadhav
Age : 52 years, Occu : Labour
2. Sonam w/o. Anokh Jadhav
Age : 30 years, Occu : Labour
3. Pinki @ Grace w/o. Jitesh Jadhav
Age : 27 years, Occu : Labour
4. Rinki D/o. Vishal Jadhav @ Rinki Paul
Age : 23 years, Occu : Labour

All resident of Suregaon, Tal. Kopargaon,
Dist. Ahmednagar

.. Petitioners

Versus

1. The State of Maharashtra
2. Pramila John Jadhav
Age : Major, Occu : Nil,

All R/o. Suregaon, Tal. Kopargaon,
Dist. Ahmednagar

.. Respondents

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Mrs. Rashmi S. Kulkarni h/f. Mr. Sanket S. Kulkarni,
Advocate for Petitioners

Mr. K.N. Lokhande, APP for Respondent / State

Mr. Y.L. Bidve h/f. Mr. N.S. Shah, Advocate for Respondent No.2

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CORAM : C. V. BHADANG &
SANDIPKUMAR C. MORE, JJ.

DATE : JULY 7, 2022

ORAL JUDGMENT (PER C. V. BHADANG, J.) :-

1. Rule made returnable forthwith. The learned APP waives service for respondent no. 1. Heard finally by consent of parties.

2. This petition is placed before this bench as the regular bench assigned with the matter is unable to take up the same.

3. By this petition, the petitioners are seeking quashing of the FIR dated 17.07.2021 in Crime No.271 of 2021 registered with Police Station Kopargaon, District Ahmednagar under Section 143, 147, 149, 504, 506, 354 and 427 of the Indian Penal Code (in short, 'I.P.C.') to the extent of the petitioners and the consequent charge-sheet in R.C.C. No.417 of 2021 pending on the file of learned Judicial Magistrate First Class at Kopargaon, Dist. Ahmednagar.

4. We have heard the learned Counsel for the petitioners and the learned APP on 06.07.2022 and at the request of the learned Counsel for respondent no.2, the matter was kept today. Even today, learned Counsel for respondent no.2 has made a request to adjourn the matter. However, with the assistance of the
GGP

learned Counsel for the petitioners and the learned APP, we have gone through the FIR and the copy of the charge-sheet.

5. The aforesaid crime is registered on the basis of the FIR dated 17.07.2021 lodged by the respondent no.2. A perusal of the FIR shows that there is a dispute between the family of the first informant and the cousin brother of her husband who are neighbours. The respondent no.2 claims that there are disputes between them on account of partition of certain agriculture lands and the dispute is pending before the competent Court at Kopergaon.

6. The incident in question had happened on 07.07.2021 at about 11.00 p.m. The first informant claims that when she along with her daughter Namrata were sitting outside her house on an otta, the petitioners along with co-accused Vishal Jadhav, Jitesh Jadhav, Alok Jadhav and Anil Jadhav came there. They were armed with sticks. It is the material allegation that the co-accused Vishal Jadhav and Jitesh Jadhav accosted the informant as to why she had carried out the repairs of a window adjacent to the house of the accused and saying this, she was threatened with life. Subsequently, it is alleged that the co-accused Vishal Jadhav and Jitesh Jadhav had stared at her with ill-intention thereby committing an offence under Section 354D of the I.P.C. and later on these accused had damaged the headlight of a tractor bearing No.MH-17-E-198 belonging to one Samsun Jadhav who is the brother-in-law of the first informant. On the basis of such

information, the FIR came to be lodged and after investigation, a charge-sheet is filed.

7. The Supreme Court in **State of Haryana and Others Vs. Bhajan Lal and Others, 1992 Supp. (1) SCC 335** has culled out the principles which are germane while considering a prayer for quashing of an FIR / charge-sheet as under : -

- “(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just

conclusion that there is sufficient ground for proceeding against the accused.

- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. The aforesaid principles have been followed in several subsequent judgments. Although the principles which are germane while considering such a prayer are well settled, the question whether a particular FIR or a charge-sheet can be quashed would depend upon the facts and circumstances of each case.

9. Coming to the present case, we find that except general allegations of an omnibus nature about the petitioners having accompanied the main co-accused armed with sticks, there is absolutely no role or overt act attributed to the petitioners in the entire incident. We are cautious of our limitations while considering a prayer for quashing of an FIR / charge sheet at the threshold and it is not open for this Court at this stage to appreciate the material in details. However, when the allegations taken at their face value themselves do not make out any offence

attributing any role or overt act, we find that a case for quashing of FIR / charge-sheet is made out. It is pertinent to note that although there is allegation that the petitioners were also armed with sticks, the investigation does not show that there is any recovery from or at the instance of the petitioners. We are of the considered view that insofar as the petitioners are concerned, the possibility of their names being included and roped in on account of the enmity between family of the informant and that of the petitioners cannot be ruled out. We, therefore, find that this case would be covered by clause no.(1) of the decision in the case of **Bhajan Lal** (supra). In that view of the matter, the petition is **allowed**. The impugned FIR and the charge-sheet to the extent of the petitioners stand quashed.

10. We make it clear that we have not expressed any opinion so far as the involvement or role played by the other co-accused.

11. The Criminal Writ Petition is allowed in the aforesaid terms. Rule made absolute accordingly.

SANDIPKUMAR C. MORE, J.

C. V. BHADANG, J.