

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1321 OF 2021

Bhaskar s/o Shankar Laware and others ...Petitioners

versus

The State of Maharashtra and others ...Respondents

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Mr. K. N. Shermale, Advocate for the petitioners
Mr. M. M. Nerlikar, A.P.P. for respondents

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

DATED: 01st FEBRUARY, 2022

ORAL ORDER (PER V.K. JADHAV, J.) :-

1. Heard.
2. The petitioners-original accused are seeking quashing of crime No. 68 of 2021 registered with Ashvi Police station, Tq. Sangamner, District Ahmednagar for the offence punishable under Sections 3(1) (R) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 143, 147, 149, 323, 504, 506 r.w. 34 of I.P.C.
3. Brief facts of the case are as follows:-

The informant is cobbler having a shop in front of his house. However, in front of his shop, original accused No.24 i.e. petitioner

No.21 herein has erected one tin shed some one year prior to the incident. The incident had taken place on 14.5.2021 at about 12.00 noon. At that time, all petitioners and co-accused persons gathered near the said shed and started covering the said shed with net. However, at that time they have pushed a gunny bag containing food grains belonging to the informant. Thus, the wife of informant has questioned to the petitioners and others, however, the petitioners and other co-accused persons abused them by saying that whether the said property belong to their father and it is their only one house in the village and they will kill them at any time. Further, she was pushed by the petitioners viz. Mothyabhau, Baban and Bhagwat. The wife of the informant was fallen down on the cot and bangles in her hands were broken. Thereafter, petitioners Mothyabhau, Baban, Bhagwat and Namdeo have abused the wife of informant by referring her caste. They have also abused other family members. On the basis of complaint lodged by the informant Bhausahab Sakharam Satpute, the aforesaid crime came to be registered with the concerned police station.

3. Learned counsel for the petitioners submits that the petitioners are innocent persons and they have been falsely implicated in connection with the present crime. Learned counsel submits that the allegations made in the F.I.R. are vague in nature and does not constitute any offence. Learned counsel submits that though the incident had occurred on 14.5.2021 the complaint came to be lodged belatedly on 16.5.2021. Respondent No.2 informant has lodged F.I.R.

afterthought and solely with intention to create pressure on the family members of the petitioners for removing the tin shed. Learned counsel submits that the incident has not taken place in the public view. There is civil dispute between the parties and in view of the same, the informant has falsely implicated the petitioners. Learned counsel submits that the petitioners have refused to remove shed which is in their land and therefore, respondent No.2 had lodged the F.I.R. Learned counsel submits that respondent No.2 informant has tried to convert the civil dispute into criminal case. Respondent No.2 informant has implicated all family members of the petitioners' family.

Learned counsel for the petitioners in order to substantiate his contentions placed reliance on the following cases:-

- I) State of Haryana and others vs. CH. Bhajan Lal and others, reported in (1992) AIR (SC) 604;
- ii) Hitesh Verma vs. The State of Uttarakhand and another, reported in (2002) AIR (SC) 5584
- iii) Swaran Singh and others vs. State through Standing Counsel and another reported in (2008) Sup. AIR (SC) 441

4. We have also heard learned A.P.P. for the respondent State.

5. Though learned counsel for the petitioners vehemently submitted about false implication of the petitioners accused in the crime, however, it is well settled that the court cannot embark upon the enquiry to find

out the truthfulness in the allegations. Furthermore, even though there is delayed complaint, it is for the trial court to appreciate the said evidence during the course of trial and to find out as to whether delay has been reasonably explained by the prosecution or not. The powers under Section 482 of Cr.P.C. are required to be used very sparingly and with circumspection. We cannot conduct the mini trial here to find out as to whether the respondent informant has falsely implicated the petitioners accused in connection with the present crime with malafide. It is not the case of converting civil dispute into criminal prosecution. On the other hand, even if there is civil dispute, the same is double edged weapon which may give rise to false implication so also incident as alleged.

6. Learned counsel has placed reliance on the judgment of Supreme Court in the case of ***State of Haryana and others vs. Ch. Bhajan Lal and others (supra)*** wherein in para 106 the Supreme court has made following observations:-

“106. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

7. Even 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"*.

8. Learned counsel has further placed reliance on the cases of Hitesh Verma vs. The State of Uttarakhand and another, reported in (2002) AIR (SC) 5584 and Swaran Singh and others vs. State through Standing Counsel and another reported in (2008) Sup. AIR (SC) 441.

9. The 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.”

10. Learned counsel has almost insisted upon to record finding that there was no formation of unlawful assembly and that even though some of the petitioners have abused the wife of respondent No.2 informant by referring her caste at public place, to record a finding to the effect that the petitioners accused are innocent person and they have been falsely implicated in connection with the present crime.

11. In view of above, we are not inclined to entertain this writ petition. Criminal writ petition is accordingly dismissed. However, we grant liberty to the petitioners to file discharge application before the trial court after filing of charge sheet.

12. Criminal writ petition is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

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