

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

CRIMINAL WRIT PETITION NO.99 OF 2021

1. Babasaheb S/o Bhau Dumbre.
2. Sharad S/o Bhau Dumbre.
3. Vaibhavi W/o Babasaheb Dumbre.
4. Shankutala @ Sakhubai Sharad Dumbre.
5. Poonam D/o Sharad Dumbre.
6. Aditya S/o Sharad Dumbre. **... Petitioners**

Versus

1. The State of Maharashtra.
2. Sangita Ashok Dumbre. **... Respondents**

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Mr. K. N. Shermale, Advocate for Petitioners.

Mr. R. B. Bagul, APP for Respondent No.1 /State.

Mr. Rajendra L. Kute,, Advocate for Respondent No.2.

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**CORAM : R. G. AVACHAT and
SANJAY A. DESHMUKH, JJ.**

DATE : 14th July, 2023.

ORDER: (Per Sanjay A. Deshmukh, J.)

1 Heard the learned advocates for the respective parties.

2 This is a petition under Section 482 of the Code of Criminal Procedure, 1973, for quashing of FIR No.1480 of 2020, registered with Sangamner Taluka Police Station, District Ahmednagar, for the offences punishable under Sections 326, 452, 323, 324, 327,

504 and 506 read with 34 of Indian Penal Code, 1960 and consequentially Regular Criminal Case No.73 of 2021, pending before the learned Judicial Magistrate First Class, Sangamner, District Ahmednagar.

3 The learned counsel for petitioners, on instructions, withdraws the petition of petitioner Nos.1 to 4 and 6.

4 So far as petitioner No.5 / Poonam is concerned, the only allegation against her is that she threw chilly powder in the eyes of Shantaram, brother-in-law of the informant in the incident dated 10th November, 2020.

5 The learned counsel for the petitioners submitted that false report is lodged against petitioner No.5. Medical evidence does not establish that chilly powder was found in the eyes of any of witnesses. A civil dispute about right of way, as per the Mamlatdar's Courts Act, is going on between parties and that is the reason of false implication.

6 The learned counsel for petitioners pointed out that petitioner No.3 has lodged FIR against the informant and her family members and in order to take revenge, the present FIR is lodged against the petitioners herein. The learned counsel for the petitioners

pointed out the report bearing FIR No.1479 of 2020 dated 11th November, 2020 lodged by petitioner No.3 against the informant and her relatives, for the offences punishable under Sections 143, 147, 148, 149, 452, 327, 324, 323, 504 and 506 of the Indian Penal Code, 1860. This report shows that more than 29 persons assaulted the petitioners herein and their family members by sticks and by an axe.

7 The learned APP for the State and the learned counsel for the informant strongly opposed this writ petition.

8 It is an admitted fact that the incident of attacks on each other took place between the two groups; one of the informant and other of the petitioners. The report shows that petitioner No.5 / Poonam thrown chilly powder in the eyes of Shantaram. In the statement of Shantaram, he stated that Poonam thrown chilly powder in his eyes. In that case, he must have suffered injury to his eyes by the chilly powder. However, no medical certificate is produced on record, at least from eye specialist, to show that there was injury to his eyes by chilly powder. The spot *Panchanama* also does not show that some part of the chilly powder was seized from the spot of incident. Considering the earlier enmity on account of civil dispute of right of way, possibility of false implication of petitioner No.5 / Poonam is not ruled out. In such situation, compelling petitioner No.5 / Poonam to

face the trial would be certainly an abuse of process of Court, as there is no *prima-facie* evidence against her. Thus, there is no material to proceed against petitioner No.5 / Poonam. The petition, therefore, deserves to be allowed to the extent of petitioner No.5 / Poonam. Hence, the following order:-

ORDER

- I. The writ petition of petitioner Nos.1 to 4 and 6 stands disposed of as withdrawn.
- II. The writ petition is allowed in terms of prayer clauses (B) and (B-1), to the extent of petitioner No.5 / Poonam only.
- III. No costs.

[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]

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