

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

998 CRIMINAL APPLICATION NO.443 OF 2023

1. Navnath Shankar Shinde
2. Raju Shankar Shinde
3. Shankarrao Sheshrao Shinde
4. Rushikesh Raju Shinde
5. Mahesh Navnath Shinde
(the applicant nos.4 and 5 are minors,
therefore, they approached through
applicant no.1/Navnath Shankar Shinde)

..APPLICANTS

-VERSUS-

1. The State of Maharashtra
2. Meerabai Shankar Rathod

..RESPONDENTS

...
Advocate for Applicants : Mr.D.K. Rajput
APP for Respondent/State : Mr.A.R. Kale
Advocate for Respondent No.2 : Mrs.A.N. Ansari
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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 5th SEPTEMBER, 2023.**

ORDER :-

. This application has been filed for quashing of the charge-sheet, being R.C.C. No.381 of 2022 pending in the Court of Judicial Magistrate, First Class, Ambad in pursuance of the FIR bearing Crime No.151 of 2022 registered with Gondli Police Station, Gondli, Tq. Ambad, Dist. Jalna for the offence punishable under sections 354, 325, 324, 323, 143, 147, 148, 149, 504, 506 read with

34 of the Indian Penal Code.

2. The case of the prosecution, in short, is that the informant is a lady. She claims to have own agricultural land Gat No.80 situated at village Dahigavhan Shivar, Tq. Ambad, Dist. Jalna. According to the applicants, the said land has been purchased by them. While it is a case of the informant that, the said land was given to them as security towards repayment of the hand loan. It is a matter to be decided by the Civil Court.

3. The incident is said to have happened on 19.05.2021 at 10.30 in the morning. The applicants allegedly assaulted the informant with stick and stone. Some of the applicants are alleged to have outraged her modesty. Blouse on her person was torn and saree was pulled only with a view to outrage her modesty. Crime, therefore, came to be registered based on the order passed by the learned Magistrate under section 156(3) of the Criminal Procedure Code.

4. The learned advocate for the applicants would submit that the petty incident of quarrel and small fight constituting the non-cognizable offence have now been blown out of proportion. The application for taking cognizance of the said incident was given to the

Superintendent of Police after 17 days. Injury certificate does not record the history of the incident. When the incident took place on 19.05.2021, the victim got herself examined on 21.05.2023 i.e. after 2 and half days of the incident. Medical certificate indicates that injuries suffered by her are of simple in nature. Two of the applicants were juvenile. They have also not been spared. According to the learned advocate for the applicants, in the aforesaid backdrop asking the applicants to stand trial would be against in the interest of justice.

5. The learned APP would on the other hand, submit that one has to go by the allegations in the FIR, which are reinforced by the statements of the witnesses. The learned Magistrate has passed a judicial order. Statements of the witnesses reinforce the informant's case. The Superintendent of Police was approached within reasonable time.

6. The learned advocate representing the respondent no.2 would reiterate the submissions made by the learned APP. According to her, from day one of the incident names of Navnath and Raju have been reported to the police. The same suggests the incident did take place. The informant and her husband are illiterate farmers. A little concession in that regard needs to be provided. Let the trial Court decide the matter on its own merits. She, therefore, urged for

rejection of the application.

7. We have considered the submissions advanced. Perused all papers relied on. It is true that there is dispute over the agricultural land. The applicants claim to have purchased the land for valuable consideration. It is the case of the informant that a hand loan was taken and as a security thereof, said land was mortgaged to the applicants. Be that as it may, the same appears to be cause of the incident.

8. Admittedly, the incident took place on 19th May at 10.30 in the morning. No sooner the incident took place, informant approached the concerned Police Station. Report lodged by her at 3.30 p.m. on the day of the incident, was registered as non-cognizable case. Informant had grievance against the applicants Navnath and Shankar. In her report, she alleges them to have quarrel over the boundary of the land. Both of them had allegedly abused her and assaulted her with fists and kicks. Concerned Police Station Officer therefore directed her to approach the Court of Magistrate to lodge the complaint. The record indicates that it is only two and half days after the alleged incident, she get herself medically examined. Her medical certificate indicates that she suffered six contusion, which are simple in nature, being an offence punishable at the most

under section 323 of the Indian Penal Code (non-cognizable offence). The MLC is also silent to record history of the cause of injuries suffered by her. It is only after 19 days of the incident, she approached the office of the Superintendent of Police with written complaint alleging therein to have been assaulted with stick and stones. She also alleged that her modesty was outraged, blouse on her person was torn. Since Superintendent of Police did not take cognizance thereof, she approached the Court of learned Magistrate with an application under section 156(3) on 16th July, 2021 i.e. about two months after the alleged incident. It is true that in the said application, she has averred to have approached the concerned Police Station on number of times and since the Police officials did not take cognizance of her report, she approached the Court of the learned Magistrate.

9. The incident took place on 19th May, 2021. The informant had grievance against only two applicants namely Navnath and Raju. They were alleged to have assaulted informant with fists and kicks. Her husband was also a victim thereof. For two days she did not approach the Government Hospital for medical examination. Her injury certificate indicates to have suffered injuries simple in nature. Subsequent applications to the Superintendent of Police and to the learned Magistrate on intervention of legal aid appears that petty

incident or incident of non-cognizable offence has now been blown out of proportion. Two out of applicants were children in conflict with law. In our view, FIR lodged in pursuant to the order under section 156(3) of the Criminal Procedure Code is nothing but an exaggerated and colourable version of the petty incident, which had taken place at 10.30 in the morning. It would therefore be not in the interest of justice to ask the applicants to face the prosecution for non-cognizable offence. We therefore allow the application in terms of prayer clauses "B" and "C".

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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