

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

960 CRIMINAL APPLICATION NO.355 OF 2021
WITH CRIMINAL APPLICATION NO. 1982 OF 2020

SHAIKH FURKHAN S/O. SHAIKH MANAN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Suryawanshi Govind G. (355/2021)

Advocate for applicant : Mr. R.M. Lone (1982 of 2020)

APP for the respondent – State : Mr. G.O. Wattamwar

Advocate for the respondent no. 2 : Mr. B.N. Gadegaonkar

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**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 30 MARCH 2023

PC :

By invoking the powers of this Court under section 482 of the Code of Criminal Procedure, two different accused from crime no. 246 of 2020 registered with Itwara Police Station, Nanded for the offences punishable under section 307, 143, 147, 148, 149, 323, 504, 506(2) of the Indian Penal Code are seeking quashment of the crime and the consequent criminal case bearing R.C.C. no. 958 of 2021 pending before the Chief Judicial Magistrate at Nanded.

2. We have heard the learned advocates of both the applicants, the learned APP and the learned advocates appearing for the respondent no. 2.

3. The FIR reads about the accused persons having assaulted the deaf and dumb brother of the informant – respondent no. 2 with stones, iron rods and sticks. He lodged the FIR on the basis of which the offence was registered.

4. Learned advocate for the applicant in criminal application no. 355 of 2021 fairly submits that the person named in the FIR as Pappu is none other than the present applicant – Shaikh Furkhan Shaikh Manan.

5. The FIR clearly reads about this applicant having hit the injured with stone. There are 3 eye witnesses who have also similarly stated about this applicant having hit the injured with stone. In view of such statement in the FIR and the statements of the eye witnesses, when there is an injury certificate on the record annexed to the chargesheet, in our considered view, the crime or the criminal case cannot be quashed as against this applicant.

6. So far as the other accused in criminal application no. 1982 of 2020 is concerned, it appears that he is seeking quashment of the crime and the criminal case on the basis of the consent or the stand being taken by the respondent no. 2.

7. It does appear that the respondent no. 2 had approached the superior police officer complaining that the Investigating Officer was

not implicating the persons who actually committed the crime. Even in his affidavit in reply, respondent no. 2 has stated that the applicant – Abdul Gaffar Abdul Khatik was not involved in the incident and has expressly consented for quashing the crime as against him.

8. However, as has been pointed out by the learned AGP, it is not that only in the FIR name of this applicant is appearing. There are statements of eye witnesses, namely, Birju Shivaji Hatwalne, Durgadas Dhondiba Parde and Shardul Devrao Upadhye who are the independent witnesses expressly naming both the accused in both these applications to have played specific role in assaulting the brother of the respondent no. 2.

9. There is injury certificate and the medical papers on the record which *ex facie* demonstrate about the injured having sustained injuries on the vital part of the body and even there is a reference regarding displaced fracture of zygoma.

10. In our considered view, irrespective of the stand being taken by the respondent no. 2, it would not be appropriate to quash the crime against the applicant - Abdul Gaffar Abdul Khatik whose active role in carrying out the assault is eminent.

11. Both the applications are dismissed.

12. It is clarified that the above observations are confined to the decision of these applications and the trial court shall not feel influenced by those.

[ABHAY S. WAGHWASE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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