

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

CRIMINAL APPLICATION NO.408 OF 2021

Manoj s/o. Madhavrao Ubale	..Applicant
Vs.	
The State of Maharashtra and anr.	..Respondents

Mr.V.S.Kadam, Advocate for applicant
Mrs.V.N.Patil-Jadhav, APP for respondent no.1
Mr.G.G.Suryawanshi, Advocate for respondent no.2

**CORAM : SMT. ANUJA PRABHUDESSAI
AND R.M.JOSHI, JJ.
DATE : FEBRUARY 01, 2023**

ORDER :-

At the outset, learned counsel for the applicant seeks leave to amend the application so as to add prayer clause (BB) and incorporate the special case, pending before the Special Court, Nanded. Leave granted. Amendment be carried out forthwith.

2. Heard finally with the consent of learned counsel for the parties.

3. This is an application under Section 482 of the Code of Criminal Procedure for quashing FIR No.05 of 2021 registered with Nanded Rural Police Station, Dist. Nanded for the offences punishable

under Sections 307 read with Section 34 of Indian Penal Code and Sections 3(1)(s) and 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, consequential Charge Sheet No.124 of 2021 dated 15.03.2021 as well as the criminal proceedings, i.e. Special Case No.33 of 2021, pending on the file of the Special Court, Nanded.

4. Heard learned counsel for the applicants, learned APP for respondent no.1 and learned counsel for respondent no.2.

5. The aforesaid crime was registered pursuant to the FIR lodged by the respondent no.2. A perusal of the FIR reveals that on 01.12.2020 at about 2.30 p.m., the respondent no.2 was a pillion rider on a motorcycle bearing registration no.MH-26-BJ-5849 driven by his friend Vijay Pandit. It is stated that the another motorcycle bearing registration no.MH-26-BF-4302 driven by the co-accused Dhyaneshwar Dhage dashed against the motorcycle bearing no.MH-26-BJ-5849.

6. The respondent no.2 alleged that the applicant herein had lodged FIR against him for abducting his daughter and the case relating to the said FIR was listed before the Sessions Court for

hearing on 20.11.2020. The respondent no.2 has stated that the applicant had deposed before the Sessions Court on 20.11.2020 and that in order to take revenge, he had asked the co-accused Dhyaneshwar Dhage to cause the accident. The respondent no.2 further stated that he was informed by his father that while he was admitted at Aadhar Hospital, the co-accused - Dnyaneshwar Dhage had come to the hospital and told him that his motorcycle was involved in the accident and requested not to lodge a report and agreed to bear the medical expenses. The respondent no.2, therefore, lodged the complaint against the applicant as well as co-accused Dnyaneshwar Dhage for attempting to cause his death and also for abusing him over his caste.

7. The statement of Maroti Godbole, the father of the respondent no.2, *prima facie* reveals that while the respondent no.2 was admitted in the hospital, the co-accused Dnyaneshwar Dhage had come to the hospital and informed him that his vehicle was involved in the accident and requested not to lodge a police complaint and agreed to bear the medical expenses. The statement of Vijay Pandit, rider of the motorcycle bearing no. MH-26-BJ-5849 also reveals that one motorcycle had dashed against his motorcycle

and that he had sustained injuries. He stated that the rider of that motorcycle abused them over their caste.

8. Undisputedly, the applicant was not present at the place of the accident. He had not abused the respondent no.2. For want of physical presence of the applicant at the spot of the incident at the time of occurrence, there is no application of Section 34 of Indian Penal Code and hence, with the aid thereof present applicant cannot be charged of commission of any crime.

9. A plain reading of the FIR and the statements of the witnesses and the other material collected during the course of investigation does not disclose involvement of the applicant herein in causing the accident or any other crime. Suffice it to say that the applicant cannot be subjected to criminal prosecution on the basis of unfounded suspicion.

10. In our considered view, the case is fully covered by illustrations 3 and 5 in the case of **State of Haryana Vs. Bhajanlal and ors., AIR 1992 SC 604**, which read thus:-

“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. xxxx

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.”

11. In the result, the application is allowed in terms of prayer clauses (B) and (BB) qua the applicant herein. Consequently, FIR No.05 of 2021 registered with Nanded Rural Police Station, Dist. Nanded for the offences punishable under Sections 307 read with Section 34 of Indian Penal Code and Sections 3(1)(s) and 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, consequential Charge Sheet No.124 of 2021 dated 15.03.2021 as well as the criminal proceedings, i.e. Special Case No.33 of 2021, pending on the file of the Special Court, Nanded, shall stand quashed qua the applicant herein.

[R.M. JOSHI, J.]

[SMT. ANUJA PRABHUDESSAI, J.]

KBP