

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

984 CRIMINAL APPLICATION NO.1290 OF 2023

1. Sivhar S/o Karbhari Pote.
2. Shideshwar @ Shidu S/o Murli Kekan. ... Applicants

Versus

1. The State of Maharashtra.
2. Shaikh Nanubi Shaikh Mehaboob. ... Respondents

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Mr. Sambhaji G. Munde, Advocate for Applicants.

Mr. A. R. Kale, APP for Respondent No.1 / State.

Mr. Harsha R. Lomte, Advocate for Respondent No.2. (Appointed).

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

DATE : 01st September, 2023.

Per Court:

. Heard.

2 This application has been filed for quashment of FIR and consequential charge-sheet in R.C.C. No.247 of 2022, for the offences punishable under Sections 307, 354, 354B, 452, 323 and 506 read with 34 of the Indian Penal Code and Section 3/25 of the Arms Act.

3 The FIR has been lodged on 13th February, 2022 at 10:40 in the morning in relation to the incident that took place at 01:00 am. It

has been alleged in the FIR that all the applicants went together to the house of the informant. One of them knocked on the door. In response to the inquiry made from the house, one of the outsider said that they were police officials. The informant, therefore, opened the door. One of them, entered the informant's house. She immediately identified him as Namdeo Kadpe. He was accompanied by his brother Tukaram. Tukaram was armed with a gun. They were accompanied by two more persons. They questioned as to whereabouts of the informant's husband and his son. It has further been alleged that both Namdeo and Tukaram caught hold the informant. Her bangles were broken. The co-accused Namdeo asked his associate namely Siddhu (applicant No.2) to fish out pistol. Applicant No.2 immediately obliged. He fished out the pistol. Then another associate namely Shivhar (applicant No.1) was asked to kidnap the wife of Zuber. All the four culprits caught hold Nusrat (Zuber's wife). They torn the blouses on the person of both the informant and Nusrat. In response to a call given by the informant, her step-son Ejaz came downstairs. Applicant Siddhu gave him a fist blow. He threatened him at a pistol point. Since the family members raised alarm, the culprits fled.

4 On investigation, the charge-sheet has been filed.

5 Our attention has been drawn to the FIR dated 31st

January, 2022. It was lodged by Namdeo (one of the co-accused) against the family members of the informant alleging them to have kidnapped his son. The learned counsel for applicants has, therefore, every reason to contend that as a counterblast to his FIR, the present FIR has been lodged. Our attention has also been drawn to a *Yadi* given by the police station officer to the medical officer whereunder the informant and her family members were referred for medical examination to find out whether they have suffered any injury to their back. The injury certificates on record indicate Shaikh Nannubi and Syed Nusrat suffered injuries simple in nature. The injury certificates have been issued 1 and ½ months after the injured were examined. Close reading of the FIR indicates that the incident has been given a colourful version. A petty incident appears to have been blown out of proportion that too with a view to take a revenge or as a counterblast to the FIR lodged by Namdeo. In the first part of the FIR, it is alleged that Siddhu was armed with a gun. In the later part, he is alleged to have been armed with a pistol. We fail to understand as to how Section 307 of IPC could be invoked when there was no assault on any vital part of the persons of any of the alleged victims. During investigation, no firearm could be recovered. From the police *Yadi*, at the most it can be observed, it to be a case of non-cognizable offence. The learned counsel appointed to represent respondent No.2 would advert our attention to the statements of the witnesses. According to

her, the averments in the FIR make out an offence.

6 The statements are of those, who are family members of the informant and none else. It is reiterated that a petty incident appears to have been blown out of proportion. It would at the most be a non-cognizable offence. Lodging of the FIR and consequential charge-sheet appear to have been attended with *mala-fides*. We are, therefore, inclined to grant the applicants relief. Hence, the following order is passed:-

ORDER

- I. The application is allowed in terms of prayer clause (B) on condition that the applicants deposit a sum of Rs.12,000/- (Rupees Twelve Thousand only) with this Court within a period of one week from today towards fees of the appointed counsel.
- II. Once the amount of Rs.12,000/- is deposited with this Court, the same be paid to the learned appointed counsel for respondent No.2, immediately.
- III. List this matter on 8th September, 2023 for compliance of the order.

[SANJAY A. DESHMUKH, J.]

[R. G. AVACHAT, J.]

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