

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

967 CRIMINAL APPLICATION NO.1468 OF 2020

1. Uttam Sandu Kunte
2. Ankush Ramchandra Kunte
3. Jyoti W/o Ankush Kunte
4. Krushna Uttam Kunte
5. Sanjay Shankar Valke

..APPLICANTS

-VERSUS-

1. The State of Maharashtra
2. Karuna Rajendra Wagh

..RESPONDENTS

...
Advocate for Applicants : Mr. Sharma Govind M.
APP for Respondent/State : Mr.S.N. Morampalle
Advocate for Respondent No.2 : Mr. Kale Yogesh D.
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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 15th SEPTEMBER, 2023.**

PER COURT :-

1. Heard.
2. This application has been filed for quashment of FIR being Crime No.07 of 2020 registered with Wadod Bazar Police Station, Dist. Aurangabad for the offences punishable under sections 353, 323, 504, 506 r/w 34 of the Indian Penal Code and under section 3(1)(r)(m) and 3(2)(v)(v-a) of the Schedule Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 ("S.C. & S.T. Act") and consequential charge-sheet filed in the Court of Special Judge at Aurangabad.

3. The learned advocate for the applicants would submit that the incident took place on 15th August, 2019. The report of the alleged incident was not lodged by respondent no.2, either on the same day or within the reasonable time. It is only in November, 2019 i.e. after three months of the alleged incident, she approaches the Court, preferred an application through an advocate for relief under section 156(3) of the Criminal Procedure Code. Based on the order passed in the said application, the crime came to be registered. According to him, clause 7 of the judgment of the Hon'ble Apex Court in the case of ***State of Haryana and others Vs. Bhajanlal and others*** reported in ***1992 Supp (1) SCC 335*** covers the present case. Our attention has been drawn to various documents to indicate that applicant no.1 had filed Writ Petition seeking directions for registration of crime and taking other action against respondent no.2 and grant of other reliefs as well. The said Writ Petition was allowed with certain directions. The statement was made therein that Gram Sevak was placed under suspension and matter would be inquired into. It has also been submitted before this Court that respondent no.2 has been disqualified being a Sarpanch of the village. She was

unsuccessful in appeal, but in revision preferred before the concerned Minister, the order of disqualification has been stayed. The learned advocate, therefore, reiterate that the false and concocted FIR has been lodged. He, therefore, urged for grant of application.

4. The learned APP would on the other hand submit that close reading of the FIR indicates the allegations against one and all the applicants. As such, prima facie, offence is made out. Nothing more is looked into in an application filed under section 482 of the Criminal Procedure Code. He, therefore, urged for rejection of the application.

5. The learned advocate for respondent no.2 would submit that on investigation the charge-sheet has been filed. He adverts our attention to the statements of certain persons, who are said to be independent witnesses. Their statements are consistent with the averments in the FIR. He would submit that when applicant no.1 himself has lodged a report with the Police Station stating that some incident has taken place in the morning of the said date, the same suggests some incident took place. According to him, the order of disqualification of respondent no.2 has been stayed by the Minister. He adverts our attention to Schedule of the S.C. & S.T. Act to submit that although in an application under section 156(3) of the Criminal

Procedure Code no provisions of the said Act were invoked, on due investigation of the crime, the Investigating Officer has come to the conclusion that offences under the said Act have also been committed by the present applicants, and therefore, the relevant sections of the said Act have been invoked against them. The learned advocate relied on the judgment of Jharkhand High Court in the case of ***Vishal Kumar Rana and ors Vs. State of Jharkhand and Anr.*** reported in ***AIR Online 2022 JHA 585*** to submit that when the FIR itself makes out an offence to proceed against the applicants, no FIR could be quashed and set aside. He therefore, ultimately urged for rejection of the application.

6. Considered the submissions advanced. Perused the FIR and papers of investigation relied on. Also gone through the authorities pressed into service.

7. Admittedly, all is not well between applicants on one hand and respondent no.2 on other. Applicant no.1 had admittedly preferred application to the Chief Executive Officer, Zilla Parishad, Aurangabad on 4th April, 2019 alleging respondent no.2 and Gram Sevak of the village to have misappropriated funds received under 14th Finance Commission. There is another document to indicate that very applicant to have been made similar complaint to a very

authority on 2nd August, 2019. On the same day, he forwards copy thereof to the District Collector, Aurangabad. There is further record to indicate applicant no.1 to have filed Criminal Writ Petition No.1502 of 2019 against respondent no.2 and Gram Sevak seeking action against the misappropriation of funds etc. The order disposing of the said Writ Petition is on record to indicate that the Gram Sevak was placed under suspension, departmental inquiry into the allegations made by applicant no.1 was proposed to be made. The matter does not rest at that. Respondent no.2 has been even disqualified from holding post of village Sarpanch. She was unsuccessful in appeal. True, the order of disqualification has been stayed by the Minister concerned.

8. In the aforesaid factual backdrop, we have to test the averments in the FIR and police papers. It was day of 15th August (Independent day), flag hoisting ceremony was to be held in Gram Panchayat office. Same in fact was held. Respondent no.2 hoisted the flag. It is true that some incident between her and at least applicant no.1 did take place soon after the flag hosting ceremony was over because admittedly applicant no.1 made a complaint to the Police Authorities, wherein he alleged the respondent no.2 to have misbehaved with him and even slapped him.

9. If the incident, as has been alleged by respondent no.2 in her FIR had in fact taken place on 15th August, a natural conduct on her part would have been to approach concerned Police Station on the same day. She did not approach either the concerned Police Station or the Superintendent of Police on the following day. There is one more fact that falsifies the averments in the FIR. On 16th August, the husband of respondent no.2 files a complaint against applicant no.4. Based on the same, non-cognizable offence was registered. Same indicates that he being husband of respondent no.2 must be presumed to have been aware of the incident that took place on 15th August, still he did not report the same to the concerned Police Station and simply lodges non-cognizable offence against applicant no.4.

10. It may be correct that on going through the FIR, ingredients of some of the offences under Indian Penal Code may get invoked. The fact is however that the FIR has been registered pursuant to the order passed under section 156(3) of the Criminal Procedure Code. There was intervention of legal advice. Well drafted application was preferred to the Court concerned. It is necessarily drafted by an advocate. In the said application itself, respondent no.2 (applicant) even did not intend to invoke offence under the SC & ST Act. Close reading of the FIR would indicate that applicant no.1 had

questioned her that when she belonged to reserve category, why she did contest the election from an open category ward. Even if these averments are taken as it is, we are surprised as to how an offence under the SC & ST Act was committed. If all the allegations are taken as it is except the offences under the S.C. & S.T. Act, it may at the most constitute a non-cognizable offence. As such case of the present applicants squarely gets covered by the directions given by the Hon'ble Apex Court in clauses 4 and 7 of the ***State of Haryana and others Vs. Bhajanlal (supra)***. In our view, the present prosecution appears to have attended by malafide. Asking the applicants to face the trial based on such material would be an abuse of process of the Court. We are, therefore, inclined to allow the application. The application therefore succeeds.

11. In the result, the application is allowed in terms of prayer clause "B" and "BB".

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

sga/