

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

CRIMINAL WRIT PETITION NO. 1440 OF 2020

1. Bharat s/o Vitthalrao Jadhav
Age : 32 years, Occu. : Service,
R/o. Bodhegaon, Tq. Shevgaon,
Dist. Ahmednagar.
2. Sandip s/o Gahinnath Badadhe
Age : 31 years, Occ. : Service,
R/o. Joharapur, Tq. Shevgaon,
Dist. Ahmednagar.
3. Dattu s/o Sheshrao Vanjari
Age : 29 years, Occ. : Service,
R/o Murami, Tq. Shevgaon,
Dist. Ahmednagar.
4. Somnath s/o Shriram Davkhar
Age : 33 years, Occu. : Service,
R/o. Chapadgaon, Tq. Shevgaon,
Dist. Ahmednagar.
5. Rajesh s/o Dnayndeo Mokate
Age : 32 years, Occ. : Service,
R/o. Bodhegaon, Tq. Shevgaon,
Dist. Ahmednagar.
6. Shivajirao @ Vidyadhar s/o Abasaheb @ Jagannath Kakade
Age : 58 years, Occ. : Business,
R/o. Miri road, Shevgaon,
Tq. Shevgaon, Dist. Ahmednagar.
7. Sampat s/o Vitthal Daspute
Age : 50 years, Occ. : Service,
R/o. Bodhegaon, Tq. Shevgaon,
Dist. Ahmednagar.

... PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Principal Secretary

Home Department,
Mantralaya, Mumbai

2. Mahadeo S/o Balasaheb Mundhe
Age : 26 years, Occu. Teacher
R/o. Pingewadi, Tq. Shevgaon,
Dist. Ahmednagar.

Mr. R. N. Dhorde, Senior Advocate i/b Mr. V. R. Dhorde, Advocate for the petitioners

Mr. P. G. Borade, APP for the respondent/State

Mr. S. R. Andhale, Advocate for respondent No. 2.

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R. M. JOSHI, JJ.**

DATE : 05th JANUARY, 2023

PER COURT :-

1. Rule. Rule made returnable forthwith. At the stage of admission, heard finally with the consent of all the parties.

2. This is a petition under Article 226 of the Constitution of India with Section 482 of the Code of Criminal Procedure for quashing FIR No. 0988 of 2020 dated 10th October, 2020 registered with Shevgaon Police Station and consequent S.C.C. bearing No. 252 of 2021 on the file of learned J.M.F.C., Shevgaon against the petitioners for offences under Sections 143, 146, 147, 323 and 506 of the Indian Penal Code.

3. The petitioner No. 5 is the Principal and petitioner No. 1 is the Vice Principal of B. Pharmacy College, petitioner Nos. 2 and 4 are the Assistant Professors of B. Pharmacy College, petitioner No. 6 is the

Secretary and petitioner No. 3 is the Watchman and petitioner No. 7 is the Coordinator of the Trust which is running the paid B. Pharmacy College. The respondent No.2 - complainant was appointed as Assistant Professor during academic year 2018-2019 and 2019-2020. The respondent No. 2 lodged the first information report on 10th October, 2020 alleging that on 7th September, 2020 at about 4.00 pm while he was in a Pharmacology lab he was orally informed that his services were terminated. He claims that the petitioners No. 1 to 5 entered the lab and informed him to leave the premises. He has stated that when he refused to leave the premises the petitioners assaulted him by kicks, blows and slaps. He has stated that the petitioner No. 5 kicked him and threatened to kill him if he entered the college premises. Pursuant to the first information report lodged by the respondent No.2 the above stated crime came to be registered.

4. Learned Senior counsel for the petitioners submits that the first information report was lodged more than a month after the alleged incident. He submits that the respondent No. 2 had lodged the complaint on the very next day of the alleged incident wherein only four persons were implicated. He has further stated that the contents of the N.C. No. 803 of 2020, dated 8th September, 2020 are not in consonance with the allegations levelled against the petitioners in the first information report dated 10th October, 2020.

5. Learned Senior counsel for the petitioners further submits that there is no material on record to indicate that the petitioners herein had formed an unlawful assembly and that they had assaulted or abused the respondent No. 2. He submits that the allegations leveled in the first information report as well as the other material on record which forms part of the charge-sheet, even if taken as true and accepted in its entirety, does not disclose cognizable offence as alleged against these petitioners. He submits that in such circumstances allowing the prosecution to continue against these petitioners would be sheer abuse of the process of law.

6. Per contra learned counsel for respondent No.2 submits that the first information report clearly indicates that these petitioners had formed an unlawful assembly and that they were involved in assaulting the respondent No. 2. He states that there are specific allegations against the petitioners which would not justify quashing of the FIR as well as the proceedings. He submits that even after the incident the respondent No. 2 had lodged several complaints before the police authorities, apprehending danger to his life. He states that no action was taken against the petitioners despite such complaints. He further raised the issue of maintainability of petition on the ground that petitioners have alternative remedy of filing application for discharge under Section 482 of Cr.P.C.

7. We have carefully perused the records and considered the submissions advanced by learned counsel for the respective parties. The objections as regards maintainability of the petition are devoid of merits. It may be mentioned that the provisions relating to discharge u/s 227 or 239 of Cr.P.C. and, the inherent powers of the High Court u/s 482 of Cr.P.C. operate in two different fields. The provisions under Sections 227 and 239 empowers the Sessions Courts/the Magistrate to discharge an accused if after perusing the records and hearing the parties, the Judge considers that there is no sufficient ground for proceeding against the accused. Whereas Section 482 of Cr.P.C. saves the inherent powers of the High Court to give effect to any order under the Code, to prevent the abuse of the process of court or to secure the ends of justice. The power under Section 482 which begins with words "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court" of wide plenitude with no statutory limitations. In ***Raj Kapoor Vs. State of Rajasthan, 1980 AIR 258*** the Apex Court while considering the question whether the inherent power of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps, has observed that nothing in the Code, not even Section 397 can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Referring to the decision in the case of ***Madhu Limaye vs The State Of Maharashtra, 1978 AIR 47,***

it is reiterated that in case the order brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice, interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of inherent power by the High Court. The Apex Court reiterated that there is no total ban on the exercise of inherent power where abuse of the process of the Court or other extra ordinary situations excites the Courts jurisdiction.

8. Thus, there is no bar on exercise of inherent powers when such exercise meets the test laid down in the section 482 to prevent abuse of the process of Court or to secure the ends of justice, though it is well settled proposition that inherent power has to be exercised sparingly and cautiously.

9. In the instant case investigation is complete with filing of charge-sheet. The offences alleged against petitioners are punishable with imprisonment up to 2 years and hence the proceeding pending against them vide S.C.C. No. 252 of 2021 would be governed by Chapter XX of Cr.P.C. titled "Trial of summons cases by Magistrate". There is no provision for discharge of accused unlike provision in chapter XIX of Cr.P.C. for trial of warrant cases. Thus, in the present case petitioners do

not have remedy of seeking discharge. Hence, even otherwise there is no embargo in entertaining the application under Section 482 of Cr.P.C. The only question for our consideration is whether the first information report as well as the other record which form part of the charge-sheet, *prima facie* disclose commission of the offences as alleged.

10. The alleged incident had occurred on 7th September, 2020. The respondent No.2 had lodged a complaint on 8th September, 2020 wherein he stated that on 7th September, 2020 at about 4.00 pm he had demanded termination letter from the petitioner No. 1 and that being annoyed by this demand, the petitioner Nos. 1, 2, 3 and 5 had assaulted him by kicks and blows and abused and threatened to cause his death in case he entered the college premises. The information did not disclose commission of a cognizable offence. Hence N.C. came to be registered.

11. On 14th September, 2020 the respondent No.2 once again lodged a complaint before the Police Inspector, Shevgaon alleging that he was assaulted by petitioner Nos. 1,2,3 and 5. On 5th October, 2020 the respondent No.2 lodged another complaint before Police Inspector, Shevgaon wherein he alleged that the petitioner No. 6 and the Coordinator-petitioner No. 7 had subjected him to mental cruelty as he had refused to pay to them an amount of Rs.10,500/- from his salary and that he was treated as bonded labour and also that his career was

ruined.

12. The respondent No.2 lodged another complaint on 10th October, 2020 in respect of the same incident wherein he alleged that on 7th September, 2020 at 4.00 pm while he was in the laboratory, petitioner Nos. 1 to 5 came to the lab and informed him that the petitioner Nos. 6 and 7 had instructed him leave the college premises. Since they did not have written instructions, he refused to leave the lab for which reason all the petitioners assaulted him with kicks and blows and threw away his books.

13. The allegations in the first information report are not in consonance with the assertions made in the N.C. complaint dated 8th September, 2020 as well as the complaint dated 14th September, 2020 before the Police Inspector of Shevgaon Police Station which was in respect of the same incident. Furthermore the respondent No. 2 had not disclosed in the said first information report that he had lodged a complaint in respect of same incident on 8th September, 2020 and that the same was registered as N.C. complaint No. 803 of 2020. As noted above the N.C. complaint as well as the earlier complaint dated 8th September, 2020 lodged before the Police Inspector, Shevgaon shows involvement of only four persons. In the subsequent complaint the

respondent No. 2 has implicated the other petitioners, obviously with an intention of invoking provisions under Sections 143, 146, 147 of the I.P.C., which are the only cognizable offences, and thereby converting N.C. complaint into a cognizable case.

14. It is also pertinent to note that every assembly of five or more persons cannot be termed as an unlawful assembly. In order to designate the assembly of five or more persons as an unlawful assembly, the common object of the persons composing the assembly must necessarily be to commit act or acts enumerated in clauses 1 to 5 of Section 141 of IPC. The FIR and the other material collected in the course of the investigation do not satisfy these requirements. On the contrary indicate that services of the respondent No. 2 were terminated, despite which he had attended duties. In such circumstances the Principal and other staff had gone to the lab to tell the respondent No. 2 to leave the college premises. The FIR does not indicate that the applicants had assembled with arms, with common object of committing any offence but had entered the lab to prevent respondent No. 2 from attending duties in view of termination of his services. This is a clear indication that the proceedings are vexatious and malicious. Thus, the FIR lacks essential ingredients of unlawful assembly.

15. Having considered the contents of the first information report as well as the N.C. complaints and other complaints and other records which form part of the charge-sheet, we are of the considered view that the allegations even if considered as true in their entirety, do not disclose the offence as alleged. In such circumstances, compelling these petitioners to face trial would be nothing but sheer abuse of the process of law.

16. In the result, the petition is allowed in terms of prayer clauses 'B' and 'BB' as a consequence thereof FIR No. 0988 of 2020 dated 10th October, 2020 registered Shevgaon Police Station and S.C.C. No. 252 of 2021 pending on the file of learned JMFC, Shevgaon is quashed.

17. Rule made absolute in those terms.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

ssp