

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1860 OF 2021

1. Shaikh Zameeruddin @ Sk. Jameer
s/o Sk. Faqrudin Patel
2. Shaikh Hamza s/o Shaikh Zameeruddin
3. Shaikh Idris Shaikh Rabbani
4. Abdul Hameed s/o Abdul Rashid
5. Shaikh Mujahid s/o Shaikh Ismail
6. Sayyed Sameer s/o Sayyed Abid (withdrawn) ...Applicants

versus

1. The State of Maharashtra
2. Najema Begum Mr. Nisar Ali ...Respondents

.....
Mr. A. L. Kanade, advocate for the applicants

Mr. A. R. Kale, A.P.P. for respondent No.1

Mr. Quazi Mubashir h/f Mr. S.S. Kazi, advocate for respondent No.2

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**CORAM : R. G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 19th OCTOBER, 2023.**

ORDER (PER SANJAY A. DESHMUKH, J.):

1. This application has been filed under Section 482 of Cr.P.C. for quashment of F.I.R. No. 82 of 2021 registered with Begumpura Police Station, Aurangabad for the offences punishable under Sections 308, 452, 354, 324, 143, 147, 148, 149, 323, 504, 506, 427, 188, 269, 270, 290 of I.P.C. and under Section 135 of

Maharashtra Police Act and the consequential charge sheet bearing No. 45 of 2022 i.e. R.C.C. No. 978 of 2022.

2. The informant averred in the report that the applicants alongwith other 20 to 25 unknown persons came in front of her house with iron rods, sticks and stones. They abused and assaulted the informant and her nephews Asim and Wasim, who sustained injuries in that assault. They tried to enter into the house of the informant. They dragged the informant and her brother-in-law and other family members. They assaulted them by fist and kick blows. They also assaulted them by cricket bat. One of the accused viz. Sameer touched the chest of sister-in-law of the informant with ill intention. Thereafter, all the applicants and other accused persons ran away. Thereafter, the report was lodged on the second day of the incident.

3. Learned advocate for the applicants submitted that Section 308 of the I.P.C. is wrongly invoked against the applicants. The injury certificate of the injured shows that they have sustained simple injuries. Prima facie, there is no evidence against the applicants. He lastly prayed to allow the application.

4. Learned A.P.P. for the State and learned advocate for respondent No.2 strongly objected the application by contending that the alleged incident took place as the same is corroborated by the material evidence of injuries sustained by the informant and her other

family members. All the applicants and other accused came in furtherance of their common object and they had participated in the crime. The overt act of the applicants and other accused persons is prima facie established. Lastly, they prayed to reject the application.

5. Perused the charge sheet. The report shows the names of all the applicants and other accused persons. They had participated in the alleged incident. The injury certificates of the injured witnesses show that they sustained simple injuries. Nobody has sustained any injury on the vital parts and therefore, Section 308 of I.P.C. would not have invoked against the applicants. Section 308 I.P.C. reads as under:-

“308. Attempt to commit culpable homicide:-
Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine or with both.”

6. Considering the facts and circumstances of the case in hand, it would be appropriate to quash the report to the extent of Section 308 of I.P.C., as it would be abuse of process of the court. The application therefore, deserves to be allowed partly to extent of

Section 308 of I.P.C.

7. In view of the above, this application is partly allowed to the extent of invocation of Section 308 of I.P.C. For rest of the offences the application stands dismissed. No costs.

8. In respect of all other accused, who are not applicants herein, the learned trial court shall consider their case on merits as to whether the charge under Section 308 of I.P.C. can be framed against them or not.

(SANJAY A. DESHMUKH, J.)

(R. G. AVACHAT, J.)

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