IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

964 CRIMINAL WRIT PETITION NO.977 OF 2021

1) Jaya d/o Raju Shirke,
Age 35 years, Occ. Household.

2) Komal @ Janam d/o Raju Shirke,
Age 29 years, Occ. Government Service,
both petitioner No. 1 and 2 r/o. H.No.
5-15-51, Lane No. 2, Behind Kanta
Hotel, Bhimnagar, Bhavsingpura,
Aurangabad, Tq. & Dist. Aurangabad.

VERSUS

1) The State of Maharashtra,
Through Cantonment Police Station,
Aurangabad.

2) Vishwanath s/o Narayan Gangawane,
Age 65 years, Occ. Social Work,
R/o. Bhimnagar, Bhavsingpura,
Aurangabad Tq. & Dist. Aurangabad. … **Respondents**

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Advocate for Petitioners : Mr. Deshmukh N. E.
APP for Respondent No. 1 : Mr. V.S. Badakh
Advocate for Respondent No.2 : Mr. Kanade Angad L.

CORAM : MANGESH S. PATIL &
M. M. SATHAYE, JJ.

DATE : 08.03.2023

PER COURT :

The petitioners are two of the accused from Crime No. 395/2020 registered with Cantonment Police Station Aurangabad for the offences punishable under Sections 326, 324, 323, 504, 506, 143, 147, 148, 149 and 427 of the Indian Penal Code, seeking quashment of the crime by invoking the powers of this Court under Section 482 of the Code of Criminal Procedure read with Article 226 of the Constitution of India.

2. The learned advocate for the petitioners would take us through the charge-sheet and points out that though the applicants have been named in the F.I.R. as also in the statements of the witnesses, there is every reason to believe that they are being falsely implicated. There are several witnesses who have stated about presence of both these petitioners not as members of the unlawful assembly but to cause intervention and segregate the two sides. He would also point out that the F.I.R. lodged by the family member of the petitioners was first in point of time. A concocted version to lodge the F.I.R. is made out. Attempt is made to implicate as many family members as possible. In fact the petitioner No. 1 herself had sustained grievous injury. It would be abuse of process of the Court if the petitioners are allowed to be prosecuted particularly when there is absolutely dearth of any material indicating specific role played by each of them.

3. The learned A.P.P. and the learned advocate for the respondent No. 2 would submit that it is a matter of formation of an unlawful assembly with a common object of assaulting the informant and his son due to a dispute between the two families. The fact that the petitioner No. 1 had sustained injury is indicative of her presence. There are witnesses who have named both the petitioners being present at the spot. It is a matter of trial to decipher the role played by each of the petitioners. Even in the absence of any specific role attributed to each of them, it can be proved that they were the members of an unlawful assembly, which would suffice to bring about their complicity. An opportunity deserves to be extended to the prosecution to prove the allegations even against the petitioners.

4. We have carefully gone through the papers and appreciate the submissions. As can be discerned, it is a matter of counter cases. Two F.I.Rs. have been lodged, one by each of the sides wherein several family members from the respective families have taken part in carrying out the assault. Apparently, there are several persons who had sustained injuries from both

the sides.

5. But then, though it is a nascent stage inasmuch as the trial is to take place, the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure namely Raju Shegaonkar, Akash Avsarmol, Ajit Jadhav and Ratnadeep Jadhav clearly mention that both these petitioners had arrived there to pacify the quarrel and it is thereafter that they were assaulted. They have conspicuously not attributed them of being members of the unlawful assembly.

6. For that matter, even in the statements of the witnesses who happen to be the family members of the informant and the injured, as far as petitioner No. 2 is concerned, they have not attributed any role or not even named her to be present. As far as petitioner No. 1 is considered, even these witnesses merely named her in the array of other accused as being present. No specific role is attributed to her. Besides, right in the teeth of the statements of independent witnesses who have expressly stated that even the petitioner No. 1 was present there to pacify the quarrel, in our considered view, and in view of the decision in the matter of **State of Haryana V/s Bhajan Lal; 1992 Supp (1) SCC 335,** this is a fit case where the process of law cannot be allowed to perpetuate injustice making the petitioners face the trial with the quality of material collected by the Investigating Officer.

7. We allow the writ petition and quash and set aside the Crime No. 395/2020 registered with Cantonment Police Station Aurangabad for the offences punishable under Sections 326, 324, 323, 504, 506, 143, 147, 148, 149 and 427 of the Indian Penal Code, as against the petitioners.

(M. M. SATHAYE, J.) **(MANGESH S. PATIL, J.)**

mkd/-