

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

25 CRIMINAL APPLICATION NO.3168 OF 2022

SHIVAJI SHRIRANG BHISE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. G L Deshpande
APP for Respondents: Mr. S D Ghayal
Advocate for Respondent 2 : Mr. K T Jamdar

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CORAM : SMT. ANUJA PRABHUDESSAI & R. M. JOSHI, JJ.
Dated: February 20, 2023

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PER COURT :-

1. Heard finally with consent of parties at admission stage.
2. This is an application u/s 482 of the Cr.PC. to quash the First Information Report No.66 of 2020 registered with Renapur, Police Station, District Latur for offence under sections 143, 147, 148, 149, 324, 323, 504, 506 of IPC.
3. Pursuant to the FIR lodged by applicant no.1-Shivaji Bhise, FIR No.234 of 2019 came to be registered at Renapur Police Station against the respondent no.2 and his sons for the offence u/s 307, 447, 324, 323, r/w 34 of the IPC. Respondent No.2 had also filed a complaint and respondent no.2 had also lodged a report before the police. He approached this Court

Anuja

with a grievance that no crime was registered by the police. By order dated 11.2.2022 this Court held that it was incumbent upon the police to register the crime if cognizable offence is disclosed. This court also referred to the injury certificates which were issued by the Medical Officer, Rural Hospital, Renapur and held that respondent no.2 and his sons had sustained injuries. It was further held that it was not for the police authorities to decide as to who is aggressor and who is defending his body or property. It is for the Court before whom both the cases are required to be listed and tried to decide the said issue. Pursuant to the said order, the Investigating Agency registered the crime pursuant to the FIR lodged by respondent no.2.

4. Learned counsel for applicants states that, the FIR is malafide. He submits that the applicants had tried to remove the encroachment made by respondent no.2 on the land of Zilla Parishad. He further submits that applicant no.1 had also filed PIL before this Court seeking to remove the encroachments made by respondent no.2 and others and that the same has been allowed. He states that pursuant to the

complaint lodged by applicant no.1, the Collector had taken steps to remove encroachment. He states that representation made by respondent no.2 has been rejected by the Collector and it was stayed by the Divisional Commissioner only till Monsoon. He submits that writ petition filed by the respondents is pending before this Court with interim stay. Learned counsel for the applicants submits that, respondent no.2 has falsely implicated all these applicants because of previous dispute and as a result of personal vendetta. He submits that, respondent no.2 has attributed specific role only to applicant no.8 Amit Bhise and there is no prima facie material to show involvement of other applicants in connection with the crime. He, therefore, submits that the FIR needs to be quashed in order to prevent abuse of process of law.

5. Per contra, learned APP and learned counsel for respondent no.2 submit that crime against the applicants has been registered pursuant to the order of this Court. It is stated that FIR prima facie shows involvement of the applicants in connection with the crime and investigation is still in progress.

It is stated that Investigation is at preliminary stage and it is not open for the court to quash the proceedings at this stage.

6. We have perused the record and considered the submissions advanced by the learned counsel for the parties. It may be mentioned that section 482 of Cr.P.C. inter alia empowers the Court to quash the proceeding to prevent abuse of process of the Court to secure the ends of justice. The Hon'ble Supreme Court in State of Haryana and others vs. Bhajan Lal and others, AIR 1992 Supreme Court Cases 335 has laid down the guidelines that must be adhered to while exercising its inherent powers under Section 482 of the Code of Criminal Procedure to quash the First Information Report.

The relevant paragraph reads thus :-

“ 102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to

give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code of the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

7. In a case of **Geo Varghese Vs. State of Rajasthan and another, reported in 2021 SCC online 873**, the Hon'ble Supreme Court has observed thus :-

“34. The scope and ambit of inherent powers of the Court under [Section 482](#) CrPC or the extra-ordinary power under [Article 226](#) of the Constitution of India, now stands well defined by series of judicial pronouncements. Undoubtedly, every High Court has inherent power to act ex debito justitiae i.e., to do real and substantial justice, or to prevent abuse of the process of the Court. The powers being very wide in itself imposes a solemn duty on the Courts, requiring great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power vested in the Court should not be exercised to stifle a legitimate prosecution. However, the inherent power or the extra-ordinary power conferred upon the High Court, entitles the said Court to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court, or the ends of justice require that the proceeding ought to be quashed.”

8. In case of **Dr. Dhurmaram Murlidhar Sonar Vs. State of Maharashtra and others reported in (2019) Supreme Court Cases 191** the Hon'ble Supreme Court has re-iterated that

while exercising the powers under [Section 482](#) Cr.PC., the court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. The Hon'ble Supreme Court referred to the decision in case of **State of Karnataka Vs. M. Devendrappa reported in (2002) 3 SCC 89** wherein it is held that for quashing of proceedings, meticulous analysis of factum of taking cognizance of any offence by Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers and if allegations set out in complaint do not constitute offence of which cognizance has been taken, it is open to High Court to quash same in exercise of inherent powers.

9. It is thus well settled that though section 482 of Cr.PC. confers wide powers on the Court to terminate criminal prosecution, such wide power has to be exercised with due care and caution. It is only when the FIR does not disclose essential ingredients constituting an offence or where

the criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive or wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, it can be quashed. However, once the FIR discloses commission of any cognizable offence, the investigation cannot be stalled at this stage.

10. In the instant case, record reveals that there is dispute between the applicants and respondent no.2 over the encroachment allegedly made by respondent no.2 on Zilla Parishad land. It is true that the applicants have filed PIL and has sought removal of the said encroachment. The previous dispute between the parties would per-se not be a ground to quash the proceeding since the FIR prima facie reveals that all the applicants were armed with weapons such as wooden stick, axe, swords etc. FIR discloses the names of applicants and states that these 11 applicants alongwith other 10-12 persons had come armed with sticks, sword, etc. and that they had assaulted respondent no.2, his wife and children. There is specific allegation that applicant no.8 had inflicted injury on

Anuja

hand of respondent no.2 and that others had also assaulted his children and wife. Medical certificates reveal that complainant and his children had sustained injuries. FIR, therefore, prima facie discloses that the applicants herein had formed unlawful assembly, armed with weapon and they had assaulted respondent no.2 and his family members.

11. The first information report reveals that applicants were the members of an unlawful assembly and armed with sticks, sword and axe. Section 149 IPC which is invoked in the present case makes every member of unlawful assembly in prosecution of common object guilty for the acts of any other member. Hence, at this stage the contention of applicants that except Applicant No.8, there is no allegations against others causing actual assault, can not be accepted. Similarly the delay in lodging report can always be explained and is not a ground to quash criminal proceeding.

12. The FIR prima facie discloses commission of cognizable offence. The investigation of the crime is at initial stage. In such circumstances, in our considered view, this is not a fit case

to exercise inherent powers under section 482 of the CrPC.
Hence, the application has no merit and the same is dismissed.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

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