

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3288 OF 2022

Gulab Yashwant Patil & others

Applicants

Versus

The State of Maharashtra & another

Respondents

Mr. V. B. Patil, Advocate for the applicant.

Mr. S. D. Ghayal, APP for the State.

Mr. R. R. Kazi, Advocate for respondent No. 2.

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

DATE : 10th FEBRUARY, 2023.

PER COURT :

1. This application is filed under Section 482 of the Code of Criminal Procedure seeking quashment of First Information Report bearing No. 92/2020 dated 1st December, 2020 registered with Marwad Police Station, Tq. Amalner, Dist. Jalgaon for the offences punishable under Sections 307, 143, 147, 149, 452, 324, 294, 427, 323, 504, 506 of the Indian Penal Code.

2. The First Information Report lodged by respondent No. 2 indicates that on 12th September, 2014, at about 6.30 am, while he was in the house, accused Nos. 1 to 47 and other accomplices assembled at his house. They came with sticks, iron rods, stones and bricks. Accused No. 1 and 2 started abusing respondent No. 2 stating that because of his complaint they were required to spend one day in the judicial custody. With these allegations against him, they entered the house of respondent No. 2 and dragged him out of the house. When respondent No. 2 started screaming for help, accused No. 1 and 2 attempted to inflict a blow of iron rod on the head of respondent No. 2. Respondent No. 2 missed the blow but Bhatu Patil got injured in the bargain. It is alleged that the other accused were instigating accused No. 1 and 2 to assault them. It is further stated that accused No. 3, 4 and 5 assaulted respondent No. 2 on his face and abdomen as a result of which, he sustained bleeding injuries. It is alleged that accused No. 6 to 47 pelted stones and bricks on the house of respondent No. 2 and have caused damage to the household articles. It is further alleged that the witnesses who came to rescue the informant were also assaulted by these applicants. It is also averred in the First Information Report that about twelve persons sustained injuries in the said assault. On the basis of said

information, the aforestated crime came to be registered against the applicants.

3. Learned counsel for applicants submits that the complaint lodged by respondent No. 2 before the learned Magistrate was false and is a counter blast to the complaint lodged by them. It is submitted that infact, respondent No. 2 and others have committed crime by assaulting some of the applicants and that the present complaint is totally false and fabricated. According to him, the injured i.e. Bhatu Patil and respondent No. 2 were arrested by police on 12th September, 2014 which indicates that they did not sustain any injury as alleged. Without prejudice to these submissions, it is argued that insofar as applicants No. 13 to 47 are concerned, there are absolutely no allegations against them showing their involvement in the actual assault or causing injury to respondent No.2 or any other person. Thus, according to him, this is a fit case wherein this Court should exercise powers under Section 482 of the Code of Criminal Procedure and quash the criminal proceedings.

4. Learned APP and learned counsel for respondent No. 2 opposed the said contentions. They drew attention of this Court to the statements of witnesses and the injury certificates on record which support the contention of respondent No. 2 in the First Information Report.

5. We have perused the records and considered the submissions advanced by learned counsel for respective parties. It is well settled that the Court while exercising discretion under Section 482 of the Code of Criminal Procedure cannot embark upon an enquiry or undertake critical and meticulous analysis of the evidence to determine genuineness or otherwise of the allegations made in the First Information Report. Discrepancies, self contradictions, omissions etc. in the statement which can be otherwise explained, cannot be looked into before the trial. The limited scope of the inquiry at this stage is to ascertain and determine whether the allegation made in the First Information Report or in the material collected in the course of the investigation discloses an offence as alleged. Once the same is disclosed, the prosecution must necessarily follow in accordance with the procedure prescribed in the Code.

6. In the case of Inder Mohan Goswami and another vs. State of Uttaranchal and others, (2007) 12 Supreme Court Cases 1, the Hon'ble Supreme Court has reiterated that the powers possessed by the High Court under Section 482 of the Code of Criminal Procedure are very wide and the same need to be exercised with care and caution. The inherent powers should not be exercised to stifle the legitimate prosecution. The Hon'ble Apex Court has also reiterated the principles laid down in the case of State of Haryana and others vs. Ch. Bhajan Lal and others, AIR 1992 Supreme Court Cases 335. Similarly, in another decision in the case of XYZ vs. State of Gujarat and another, (2019) 10 Supreme Court Cases 337, the Hon'ble Supreme Court has observed that it is improper for the High Court to quash First Information Report when there are serious allegations in the complaint.

7. In the instant case, the First Information Report specifically names present applicants to be part of unlawful assembly which was armed with weapons. There is specific allegation that accused No. 1 and 2 caused assault on respondent No. 2 and Bhatu Patil with iron rod and in the said assault they sustained injury.

There is further allegation that the witness who came to the rescue of respondent No. 2 were also assaulted. The statements of the injured witnesses also prima facie support the allegations in the First Information Report. The medical certificates produced on record in the charge-sheet indicate that both persons sustained injuries in the incident in question. It may be the case of applicants that the report lodged against them is by way of counter blast to the complaint lodged by them against respondent No. 2 and others but the same cannot be considered to quash criminal proceedings.

8. Be as it may, this Court while exercising powers under Section 482 of the Code of Criminal Procedure, needs to consider whether acceptance of allegations in the First Information Report and the material collected during the course of investigation, make out any cognizable offence against accused or not. As stated hereinabove, there are statements of witnesses coupled with medical certificates which prima facie indicate that the applicants whose names are mentioned in the First Information Report formed unlawful assembly.

9. As far as other applicants are concerned, there is allegation that all accused came together to the house of respondent No. 2 armed with weapons. Apart from causing assault with weapons, they pelted stones and bricks on the house of respondent No. 2 and caused damage to the household articles. Thus, the allegations in the First Information Report disclose formation of unlawful assembly with common object of assaulting respondent No. 2 and causing damage by pelting stones on house as a revenge for detaining them in custody . Section 149 of the Indian Penal Code makes every member of unlawful assembly guilty of the offence committed in prosecution of common object. It is thus immaterial to consider the independent role as played by each member of the said assembly. We, therefore, do not find substance in the contention of learned counsel for applicants that no role has been alleged against them in assault and hence proceedings can be quashed qua these applicants.

10. The Hon'ble Apex Court in the case of State of Haryana and others vs.Ch. Bhajan Lal (supra) has laid down guidelines in which powers under Section 482 of the Code of Criminal Procedure can exercised to quash criminal proceedings and the present case

does not fall within any of those illustrations to exercise such extraordinary inherent powers. In the result, application stands dismissed.

(R. M. JOSHI)
Judge

(SMT. ANUJA PRABHUDESSAI)
Judge

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