

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

**920 CRIMINAL WRIT PETITION NO.1352 OF 2023**

1. Atul Vikram Munde  
2. Shivkant Narayan Munde .. Petitioners

Versus

The State of Maharashtra and Another .. Respondents

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Advocate for Petitioners : Mr. Shrimant Ravsaheb Kedar  
APP for Respondent / State: Mr. S.P. Sonpawale

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**CORAM : R. M. JOSHI, J.**  
**DATE : 10<sup>th</sup> OCTOBER, 2023**

**PC. :-**

. By consent of both sides, heard finally at admission stage.

2. This petition takes exception to the order dated 02.05.2023 passed in Sessions Case No.25 of 2021 whereby Superintendent of Police was directed to initiate appropriate prosecution against the informant and present petitioners (the then Gramsevak and Sarpanch of village Devgaon) for lodging false FIR against accused therein.

3. Learned counsel for the petitioners submits that learned Trial Court has committed serious error in directing the police authorities to

prosecute petitioners merely on the basis of the statement of the informant that prior to filing of the FIR he had discussion with the Gramsevak and Sarpanch. According to him, said statement would not be sufficient to hold that petitioners made informant to lodge FIR. It is his further contention that in fact no offence is made out against petitioners in order to call upon the police authorities to register any crime against them.

4. Learned APP opposed said submissions by contending that on the face of record, offence punishable under Sections 182 and 211 of the Indian Penal Code is made out as false information is given in order to cause injury to the accused person.

5. Perusal of the impugned order shows that there is no suggestion made to the informant that false report is lodged with police. Thereafter there seems no suggestion made to informant that report was lodged at instance or instigation of petitioners. In absence of any such evidence on record, it was not open for the Trial Court to direct prosecution against the petitioners. The findings recorded by Trial Court that the FIR is lodged to gag accused and inference drawn that FIR is false in nature, are not based on evidence but apparently surmises and conjunctures. Needless to state that

initiation of prosecution against any person is serious matter and not to be done casually, by drawing inference without foundation / evidence.

6. Even if the submissions of the learned APP are accepted that any false information was given, the same might only get attracted against the informant and certainly not against the present petitioners who are admittedly not informant in the case. In order to hold the petitioners responsible for the said offence vicariously case must be covered by Section 107 of the Indian Penal Code. Unless, there is instigation, illegal omission or aiding to do anything, it cannot be said that petitioners are even abettors. Apart from this, except for the isolated statement that prior to the filing of the FIR informant had discussion with Gramsevak and Sarpanch, there is no other material on record to hold them responsible for report and that statement by itself will not make them liable for the lodging of the FIR. In such circumstances, this Court finds substance in the challenge to impugned order by petitioners. In the result, the following order is passed.

#### ORDER

- (i) Criminal Writ Petition is allowed.
- (ii) The direction given in clause no.4 of the operative order dated 02.05.2023 passed by learned Additional Sessions Judge-4, Ambajogai in

Sessions Case No.25/2021 stands set aside to the extent of present petitioners.

**(R. M. JOSHI, J.)**

GGP