

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1485 OF 2021

- 1] Vijay S/o Hanumantrao Bhosale
Age : 28 years, Occu : Agri.,
R/o Bajaj Nagar, Waluj MIDC,
RX-8, Aurangabad,
Tq. and Dist. Aurangabad

**[Dismissed as withdrawn as per Courts
Order dated 14-03-2022]**

- 2] Rajendra S/o Ramchandra Bhutkar
Age : 46 years, Occ : Service,
R/o Adarshnagar, Vidya Colony,
Kalyan Road, Ahmednagar

- 3] Vaishali W/o Hanumant Bhosale
Age : 53 years, Occu : Household,
R/o Bajaj nagar, Waluj MIDC,
RX-8, Aurangabad,
Tq. And Dist. Aurangabad

.. Petitioners

Versus

- 1] The State of Maharashtra
Through its Principal Secretary
Home Department,
Mantralaya, Mumbai
- 2] Govind S/o Vijay Tarte,
Age : 30 years, Occu : Business,
R/o Akhar Baug, Main Road,
Pathardi, Tq. Pathardi, Dist. Ahmednagar

.. Respondents

...

Advocate for petitioners : Mr. V.R. Dhorde h/f. Mr. P.S. Dighe
Addl. PP for the respondent – State : Mrs. M.A. Deshpande
Advocate for the respondent no. 2 : Mr. Saeed S. Shaikh

...

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

DATE : 23 MARCH 2023

ORDER (MANGESH S. PATIL, J.) :

All the three accused in crime no. 614 of 2021 registered with Kotwali Police Station, Ahmednagar for the offences punishable under section 324, 341, 504, 506 r/w. 34 of the Indian Penal Code are invoking the powers of this Court under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure for quashing the crime and the consequent R.C.C. no. 1188 of 2021 pending on the file of the learned Chief Judicial Magistrate, Ahmednagar.

2. The sum and substance of the allegations as can be discerned from the FIR and the chargesheet are to the effect that the petitioners in furtherance of their common intention assaulted the respondent no. 2 with a fiber stick and threatened him of dire consequences on 21-08-2021 at about 9:30 pm, by accosting the car in which he was travelling.

3. It is alleged that in the same evening the two vehicles one in which the petitioners were travelling and the one in which the respondent no. 2 was travelling had collided about which he lodged a report with the same police station. It is then alleged that thereafter when he had gone to a place called Wadia park, the petitioners no. 1 and 2 had damaged his car about which he once again lodged a report

with that police station. It is thereafter while he was returning to his village Pathardi that the afore-mentioned incident of assault took place.

4. The petition to the extent of the petitioner no. 1 – Vijay Hanumantrao Bhosale who is arrayed as accused no. 1 in the chargesheet was dismissed as withdrawn. Consequently, we are to examine the role attributable to the petitioners no. 2 and 3.

5. At the outset, it is necessary to note that as far as petitioner no. 3 is concerned, her name does not appear in the FIR *albeit* it is alleged therein that a lady travelling in the car with the other petitioners had hurled abuses. For that matter the only eye witness whose statement has been recorded under section 161 of the Code of Criminal Procedure, namely, Vaibhav Rajendra Borude who claims that he was also accompanying the respondent no. 2 in his car throughout all the three episodes, has also not named the petitioner no. 3 but alleges that a lady from the car had hurled abuses at the respondent no. 2. It is therefore quite clear that there is absolutely dearth of any material in the entire chargesheet to *prima facie* demonstrate that lady who had hurled abuses, was the petitioner no. 3 and none other. The vital link to identify her is conspicuously missing.

6. As regards the petitioner no. 2 is concerned, the FIR specifically mentions him as travelling with the petitioner no. 1 and both of them having damaged the respondent no.2's car in the second

episode which is alleged to have occurred in Wadia park. Going by the sequences of the three episodes, the respondent no. 2 names the petitioner no. 2 – Rajendra specifically only in the second episode regarding damage to his car. He has not uttered anything about his presence when the first incident of collusion between the two vehicles had taken place. It is apparent that the respondent no. 2 could identify the petitioners no. 1 and 2 and was knowing their names while lodging the FIR.

7. If this was the state-of-affairs, in the normal course had the petitioner no. 2 – Rajendra participated in the carrying out the assault on the respondent no. 2 in the third episode, the respondent no. 2 could have easily named him. He could name the petitioner no. 1 as one of the two assailants but states that the third assailant was unknown to him, more so, when the FIR alleges that it is not the petitioner no. 1 but the second unknown person who had actually assaulted the respondent no.1 with a fiber stick. Conspicuous absence specifically referring to the petitioner no. 2 by name in spite of being able to name him in the second episode at Wadia park creates a serious doubt about involvement of the petitioner no. 2.

8. So far as the statement of Vaibhav Rajendra Borude who is posed to be an eye witness, interesting enough to note that he claims that he was travelling in the same car with the respondent

no. 2 and could have named the petitioner no. 2 being the assailant. Assuming for the sake of arguments, the FIR was lodged on 22-08-2021 whereas the statement of this witness was recorded on 24-08-2021, he could have come to know the name of the petitioner no. 2 during those two days. But then it is important to note that his very presence and being the eye witness is clearly doubtful. If he being a friend of the respondent no. 2, was accompanying the latter during the entire three episodes, absence of any reference to his such presence in the entire FIR is conspicuous and acts as a death knell to his version of being an eye witness. There is absolutely no explanation coming forth as to why though it was allegedly a matter of three different episodes taking place at three different times, conspicuously, the respondent no. 2 has not at all referred to his such presence in the FIR. It does not seem to be a mere human lapse or error.

9. With this quality of material available to implicate the petitioners no. 2 and 3, in our considered view, their case is clearly covered by the guidelines laid down in the matter of ***State of Haryana and others Vs. Ch. Bhajan Lal and others; AIR 1992 SC 604.*** It would be sheer abuse of the process of law and exercise in futility if the petitioners no. 2 and 3 are allowed to face the prosecution with such weak material.

10. We allow the petition to the extent of the petitioners no. 2 and 3 and quash and set aside the crime no. 614 of 2021 registered with Kotwali Police Station, Ahmednagar for the offences punishable under section 324, 341, 504, 506 r/w. 34 of the Indian Penal Code and the consequent R.C.C. no. 1188 of 2021 pending on the file of the learned Chief Judicial Magistrate, Ahmednagar.

[M. M. SATHAYE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/