

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

58 CRIMINAL WRIT PETITION NO.1777 OF 2022

**KALU BHORU TALPADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.A.A. Fulfagar, Advocate for the petitioners.

Mr.S.R. Yadav-Lonikar, APP for the respondent/State.

Mr.A.N. Nagargoje, Advocate for R-2.

**CORAM : KISHORE C. SANT, J.
DATED : 15.03.2023**

PC :-

01. Heard learned Advocate for the parties. This petition is taken up for final disposal by consent of the parties.

02. The petitioners are original accused Nos.5 to 10 in SCC No.232 of 2015, pending in the Court of learned JMFC, Akole for the offence punishable under sections 323, 504, 506, 447, 188 read with section 34 of the Indian Penal Code. The complaint is lodged by respondent No.2 herein.

03. The learned Advocate for the petitioners at the outset submits that this Court by judgment dated 04.10.2022 in Cr.W.P. No.1020 of 2022 has

already quashed the proceedings as against accused Nos.1 and 2. Accused Nos.3 and 4 are dead. Thus, now, the petitioners have come to this Court. It is submitted that on reading of the complaint it does appear that no offence is made out against any of the accused persons and considering that aspect this Court has allowed the petition that was filed by original accused Nos.1 and 2. He submits that apart from that the complaint was filed in the year 2015, the order of issuance of process came to be passed on 23.09.2019 and actual summons was issued on 07.01.2022. He submits that it is thus clear that the respondent has filed complaint only to harass accused persons and he is not taking steps. He also relies upon observations made by this Court in the petition and prays for quashing and setting aside the proceeding of the criminal case.

04. The learned Advocate for respondent No.2 opposed the petition mainly on the ground of delay and laches specifically on the fact that this petition is filed on 08.11.2022 i.e. after the judgment is passed in Cr.W.P No.1020 of 2022. This clearly shows that the petitioners were waiting for the decision in earlier petition. They have alternative and efficacious remedy which they have not availed and now directly they approached this Court.

05. The learned APP also opposed the prayer stating that now the Court below has taken cognizance and issued process by applying its mind and therefore no interference is required at this stage.

06. Considering the fact that this Court has already dealt with all the contentions of both the parties and has allowed the writ petition in respect of accused Nos. 1 and 2, propriety demands that when a judgment is squarely applicable to the facts of a case and complaint is quashed and set aside to the extent of the petitioners therein, even present petitioners also deserve same relief. Therefore, without going into much discussion, this Court finds that continuation of SCC No.232 of 2015 would clearly amount to abuse of process of law and in this view of the matter following order is passed.

07. The criminal writ petition is allowed in terms of prayer clause (A) and disposed off.

[KISHORE C. SANT, J.]