

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

CRIMINAL APPLICATION NO. 4255 OF 2022

1. Mangesh Manchakrao Deshmukh
Age: 33 years, Occu.: Agri,

2. Shraddha Mangesh Deshmukh
Age: 26 years, Occu.: Household,

Both R/o Samta Nagar, Tq. Kaij,
Dist. Beed

..APPLICANTS

VERSUS

1. State of Maharashtra
Through Police Inspector,
Kaij Police Station,
Tq. Kaij, Dist. Beed

2. Anant Manchakrao Deshmukh
Age: 46 yeas, Occu.: Agri.,
R/o Samta Nagar, Tq. Kaij,
Dist. Beed

..RESPONDENTS

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Mr. H.P. Jadhav, Advocate for applicants
Mr. A.R. Kale, A.P.P. for respondent no.1 – State
Mr. M.R. Andhale, Advocate for respondent no.2

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

DATE : 19th JANUARY, 2023

PER COURT :

1. Heard finally with consent of learned counsel for the respective parties.

2. By this application under Section 482 of Code of Criminal Procedure, the present applicants have sought to quash the F.I.R. bearing C.R.

No. 207 of 2022 registered with Kaij Police Station, Dist. Beed and consequent R.C.C. No. 282 of 2022 pending on the file of Judicial Magistrate First Class, Kaij for the offences punishable under Sections 452, 324, 323, 504 and 506 read with Section 34 of the Indian Penal Code.

3. The aforesaid crime was registered pursuant to the F.I.R. lodged by the Respondent No.2. The Applicant No.1 is the brother of Respondent No.2 and Applicant No.2 is the wife of Applicant No.1. It is alleged in the F.I.R. that on 01st June, 2022 while he was climbing the stairs of his house, the Applicant No.1 had told him to go and stay in the village. There was some altercation between them. Respondent No.2 has alleged that both the applicants abused him. Applicant No.1 assaulted him by kick and fist blows. It is also alleged that the Applicant No.1 caused him hurt by means of *Kolhapuri chappal* and further threatened to cause his death.

4. Sections 452 and 324 I.P.C. are the only cognizable offences registered against the applicants. The allegations in the F.I.R. and other material on record do not indicate that the incident had occurred inside the house. On the contrary, the records reveal that the incident is question had occurred on the stairs leading to the house of Respondent No.2. Hence, the material on record does not disclose that the applicants have committed an offence of house trespass or that they had entered the house of the Respondent No.2 with an intention of committing any offence. Furthermore,

the material on record indicates that the Respondent No.2 was assaulted by the Applicant No.1 by kicks and fist blows and with *Kolhapuri chappal*. *Kolhapuri chappal* cannot be considered as a dangerous weapon as specified in Section 324 I.P.C. The offence at the most would be covered by Section 323 I.P.C. which is a non-cognizable offence.

5. Having gone through the records, in our considered view, the allegations in the F.I.R. do not constitute a cognizable offence. Suffice it to say that the police cannot investigate non-cognizable offence, except with the order of a Magistrate having power to try such case or commit the case for trial as contemplated under Section 155(2) Cr.P.C. In the instant case no such permission is obtained. The present case is covered by Illustration (4) in the case of ***State of Haryana and Others Vs. Ch. Bhajan Lal and Others, 1992 AIR 604***. Under the circumstances, compelling the applicants to face prosecution would be a sheer abuse of the process of Court.

6. In the result, criminal application is allowed in terms of prayer clause (B). Consequently, the F.I.R. bearing C.R. No. 207 of 2022 registered with Kaij Police Station, Dist. Beed and consequent R.C.C. No. 282 of 2022 pending on the file of Judicial Magistrate First Class, Kaij stand quashed.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

SSD