

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

CRIMINAL APPLICATION NO. 3813 OF 2019

1. Mohammad Asif Mohammad Ayub
Age: 23 yeas, Occu.: Private Service,
R/o Sadatnagar, New Banewadi,
Aurangabad, Dist. Aurangabad
2. Muskan Begum Mohammad Asif
Age: 20 years, Occu.: Household,
R/o As above
3. Salim Khan Bashir Khan
(Baba Khan Salim Khan)
Age: 45 years, Occu.: Business,
R/o Phule Nagar, Majalgaon,
Tq. Majalgaon, Dist. Beed
4. Hasina Khan Salim Khan
Age: 38 years, Occu.: Household,
R/o As above
5. Tabbo Khan Salim Khan
Age: 35 years, Occu.: Household,
R/o As above
6. Shaikh Salman Feroz Shaikh Nasir
(Salman Feroz Nasir Khan)
Age: 30 years, Occu.: Driver,
R/o Sadatnagar, Aurangabad
Tq. & Dist. Aurangabad
7. Shaikh Akram Shaikh Nizam
(Akram Nasir Khan)
Age: 25 years, Occu.: Driver,
R/o As above

..APPLICANTS

VERSUS

1. State of Maharashtra
Through Police Station Officer,
Satara Police Station, Aurangabad

2. Tahera Begum Mohammad Ayub
 Age: 38 years, Occu.: Household,
 R/o Sadatnagar, Lane No.9,
 Railway Station, Aurangabad,
 At present c/o Shaheen Nawaz Colony,
 Near Ring Road, Millat Nagar,
 Gulbarga, Karnataka State

..RESPONDENTS

....
 Mr. Pratap Vikhe Patil, Advocate h/f Mr. S.J. Salunke, Advocate for applicants
 Mr. R.D. Sanap, A.P.P. for respondent no.1 – State
 Mr. A.A. Khande, Advocate for respondent no.2

....

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

DATE : 02nd MARCH, 2023

PER COURT :

1. At the outset, learned counsel for the applicants seeks leave to amend the prayer clause to incorporate the R.C.C. number.

2. Leave granted. Amendment to be carried out forthwith.

3. With consent of learned counsel for the respective parties, heard finally at the stage of admission.

4. This is an application under Section 482 of Code of Criminal Procedure to quash the F.I.R. bearing C.R. No. 358 of 2019 registered with Satara Police Station, Dist. Aurangabad and consequent R.C.C. No. 272 of 2021 pending on the file of C.J.M., Aurangabad for the offences punishable

under Sections 323, 325, 326, 504, 506 and 201 read with Section 34 of the Indian Penal Code.

5. Learned counsel for the applicants submits that there is civil dispute between Applicant No.1 and the Respondent No.2, who is his mother, over the rights in respect of the house. He states that the Respondent No.2 has already filed a civil suit in respect of the said house. He claims that the Respondent No.2 had been ill-treating the Applicant No.2, who is her daughter-in-law and the Applicant No.1 had already filed a complaint in this regard against the Respondent No.2. He submits that the Respondent No.2 is not residing in the said house and that she has falsely implicated the applicants in this crime.

6. Per contra, learned A.P.P. and learned counsel for Respondent No.2 state that the F.I.R. as well as the statement of the Respondent No.2 recorded under Section 164 Cr.P.C. and the statements of the other injured persons prima facie reveal that the Applicant No.3 is involved in assaulting the Respondent No.2 and others by iron rod, sticks, fists and kicks. He states that the medical record also prima facie substantiates the contentions of Respondent No.2. It is further stated the uncontroverted material on record shows involvement of the applicants in the commission of cognizable offence and hence this is not a fit case to exercise power under Section 482 Cr.P.C.

7. We have perused the record and considered the submissions advanced by learned counsel for the respective parties. The only question for our consideration is whether the F.I.R. and other material collected during the course of investigation prima facie show involvement of the applicants in the commission of said crime. Before advertng to the facts of the case, it would be relevant to note that power under Section 482 Cr.P.C. confers inherent powers on the Court *inter alia* to prevent the abuse of process of Court and/or to secure ends of justice.

8. In case of **Dr. Dhurumaram Murlidhar Sonar Vs. State of Maharashtra and others reported in (2019) Supreme Court Cases 191** the Hon'ble Supreme Court has re-iterated that while exercising the powers under Section 482 Cr.P.C., the court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. The Hon'ble Supreme Court referred to the decision in case of **State of Karnataka Vs. M. Devendrappa reported in (2002) 3 SCC 89** wherein it is held that for quashing of proceedings, meticulous analysis of factum of taking cognizanc of any offence by Magistrate is not called for. Appreciation of evidence is also not permissible in exrercise of inherent powers and if allegations set out in complaint do not constitute offence of which cognizance has been taken, it is open to High Court to quash same in exercise of inherent powers.

9. It is thus well settled that though Section 482 of Cr.P.C. confers wide powers on the Court to terminate criminal prosecution, such power has to be exercised with due care and caution. It is only when the FIR does not disclose essential ingredients constituting an offence or where the criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive or wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, it can be quashed. However, once the FIR discloses commission of any cognizable offence, the investigation cannot be stalled at this stage.

10. Reverting to the facts of the present case, the Respondent No.2, is the mother and mother-in-law of the Applicant Nos.1 and 2 respectively. There is a civil dispute between the Respondent No.2 and the applicants over the residential house. Respondent No.2 had lodged the F.I.R. wherein she has alleged that on 12th March, 2019 the applicants had entered her house and abused and threatened to cause her death. She had lodged a complaint in this regard to the Commissioner of Police. It is further alleged that on 09th April, 2019 the applicants again entered the house of Respondent No.2 and assaulted her and others by means of sticks and iron rods. She has further stated that the applicants had also kicked Parveen Shaikh, who was pregnant, which resulted into her miscarriage. She further states that she

had sustained injuries as a result of assault by the applicants. Statement of Respondent No.2 was also recorded under Section 164 Cr.P.C. The said statement also prima facie shows involvement of the applicants in commission of said crime. Furthermore, the statements of the witnesses, particularly the injured persons, also prima facie show involvement of the applicants in assaulting them with sticks, iron rods, etc. The medical record also indicates that the informant as well as several other witnesses i.e. Mohammad Ayub, Parveen Shaikh, etc. had sustained injuries. The records also show that one of the witnesses had sustained injury on parietal region.

11. The material on record prima facie shows involvement of the applicants in commission of cognizable crime. In such circumstances, the criminal proceeding cannot be quashed only on the ground of pending civil dispute between the parties and/or on a presumption of false implication. Having considered the entire material on record, in our considered view, this is not a fit case to exercise power under Section 482 Cr.P.C. Hence, criminal application has no merit and is accordingly dismissed.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

SSD