

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO. 720 OF 2012

Dayanand Basappa Umbarje,	]	
Age : 43 Years, Occupation : Business,	]	
R/o. Karajgi, Taluka Akkalkot,	]	
District Solapur.	]	... Applicant
		(Org. Accused No.1)

V/s.

1)	The State Of Maharashtra,	]	
	(Through Akkalkot (South) Police	]	
	Station Vide C.R. No. 84/2011)	]	
		]	
2)	Chanvirappa Virpakshappa Gangade,	]	
	Age : 72 Years, Occupation : Retired,	]	
	R/o. Narsinh Galli, Karajgi,	]	
	Taluka Akkalkot, District solapur.	]	... Respondents

Mr. Priyal G. Sarda for Applicant.
Mr. S. S. Hulke, APP for Respondent No.1-State.

**CORAM : A.S. GADKARI AND
SHARMILA U. DESHMUKH, JJ.**

DATE : 5th OCTOBER, 2023.

JUDGMENT (Per : A.S. Gadkari, J.) :

1) Heard Mr. Priyal G. Sarada, learned Advocate for Applicant and Mr. S. S. Hulke, learned APP for Respondent-State. Perused entire record produced before us.

Record indicates that, Respondent No.2 is duly served, however none appears for Respondent No.2.

2) By the present Application under Section 482 of Criminal Procedure Code (for short the "*Cr.P.C.*"), Applicant, accused No.1 has prayed for quashing of First Information Report (F.I.R.) No. 84 of 2011, registered with Akkalkot (South) Police Station, District Solapur, under Sections 143, 147, 148, 149, 452, 323, 504, 506 of the Indian Penal Code (for short the "*I.P.C.*") and the proceedings arising therefrom.

3) Record indicates that, by an Order dated 29th November, 2012 present Application was Admitted and Rule was issued. As and by way of interim relief, Investigating Officer was directed not to file charge-sheet against the Applicant without prior permission of this Court. That, despite there being a prohibitory Order passed, the Investigating Officer had proceeded to file charge-sheet and therefore by an Order dated 23rd January, 2013, this Court had issued notice to the Investigating Officer under the Contempt of Courts Act, 1971. The said notice was separately registered as Suo-Moto Contempt Petition. The said Petition was subsequently disposed off after the Investigating officer tendered unconditional and unqualified apology.

4) The F.I.R. herein is lodged by Respondent No.2, on 17th August, 2011. It is the prosecution case that, witness Hanumant Bharamshetty informed Respondent No.2 that, on 16th August, 2011 at about 2.30 p.m. the co-accused Nagnath Kadgav, resident of Handral, was abusing him in filthy language. The informant after completing his work went to his residence at village Karjagi. At about 6.45 p.m. when informant alongwith

his wife, sons and daughters-in-law was at his residence, Nagnath Kadgav and five-six other persons barged to his house. Nagnath Kadgav was under the influence of alcohol. The informant asked as to why he came to his house. At that time Nagnath Kadgav threatened the informant by saying that, he would see to it as to how the informant comes to school. The co-accused Nagnath Kadgav uttered the words that, he is having support of 'Umbarje' (Applicant). It is alleged that, Nagnath Kadgav and other five-six persons thereafter assaulted the informant. When the wife of the informant tried to pacify the said melee, it is alleged that, Nagnath Kadgav pushed her and thereafter all the accused persons assaulted the informant. In this brief premise, present crime is registered.

5) Perusal of F.I.R. and statements of eye witnesses clearly reveal that, except the co-accused Nagnath Kadgav uttering the words that, he is having the support of the Applicant, no other overt act or no other act is attributed to the Applicant. Admittedly, the Applicant was not present at the scene of offence. The other three witnesses also state that, at the time of assault Nagnath said that, he was having backing/support of Applicant. Perusal of charge-sheet indicates that, there is no corroboration to indicate that, the Applicant instigated the principal accused Nagnath Kadgav to commit house trespass of the informant and/or to assault him. The offence alleged against Applicant is under Section 149 read with Sections 452 and 323 of the I.P.C.

As noted earlier, except the words uttered by co-accused Nagnath Kadgav that, he was having support of Applicant there is no other evidence on record to even remotely indicate that, the Applicant either actively participated in the said crime or instigated the said co-accused to commit present crime. Perusal of charge-sheet reveals that, no offence at all is made out against Applicant.

6) In view of the above, we find that continuation of the proceedings against the Applicant will be sheer abuse of process of law and none else. The Application therefore deserves to be allowed.

7) Application is accordingly allowed in terms of prayer clause (b).

8) Rule is made absolute.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)

CHAITANYA
ASHOK
JADHAV

Digitally signed
by CHAITANYA
ASHOK JADHAV
Date:
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