

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3045 OF 2022

Balshiram Lahu Tanpure & Anr. ..Petitioners
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Pradeep Thorat i/by Adv. Aditi Naikare for the Petitioners.
Mr. K. V. Saste, APP for the Respondent-State.
Mr. Vijay Dighe for the Respondent No.2.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ**

DATED : 4th JULY, 2023

P.C.(Per Nitin. W. Sambre, J):

1. The Petition is for quashing of FIR in Crime No. 244 of 2022 registered on 05/04/2022 for the offence punishable u/s. 324, 323, 504, 506 r/w. 34 of IPC and u/s. 91 & 92 of the Rights of Persons with Disabilities Act, 2016 which was subsequently resulted into charge-sheeting the Petitioners for the above offence.
2. The genesis of the prosecution case against the Petitioners are that the Petitioner No. 1 and the Respondent No. 2/complainant are the real brothers. The Respondent No. 2/Complainant claims existence of oral partition between the Petitioners and the Respondent No. 2, which was effected by their parents. The Petitioners taking advantage of the physical disability

of the Respondent No. 2/Complainant allegedly not only threatened the Respondent No. 2/Complainant but also assaulted him by stick and twisted his hand, which incident took place on 22/03/2022 at 12.00 noon. Accordingly, the Respondent No. 2 lodged complaint on 05/04/2022. As such, investigation was set in motion.

3. Mr. Thorat, learned counsel for the Petitioners would urge that alleged incident is of 20/03/2022 for which the complaint was lodged on 05/04/2022. According to him, the Respondent No. 2 in his Affidavit has clearly conceded that the offence is registered under the political pressure of the local MLA. So as to substantiate the same, he has relied on the pleadings in paragraph no. 12 of the Affidavit-in-Reply of the Respondent No. 2/Complainant. Apart from above delayed FIR and the registration of the offence under the political pressure, can be inferred from the statements and pleadings. Sister of the Petitioner and son of the Respondent No. 2, his wife in their statement recorded u/s. 161 of Cr.P.C. discloses that the incident was narrated by the Respondent No. 2/Complainant to the said witnesses on the date of incident i.e. 20/03/2022. He would as such urge that the natural conduct of the aforesaid witnesses should have been to immediately take the

Respondent No. 2/Complainant to the police station for lodging of FIR or else FIR could have been lodged by any of the family members, the Respondent No. 2 being a disabled person. It is claimed that even the investigation carried out does not support the case of the prosecution as the necessary ingredients for an offence punishable u/s. 324 of the IPC cannot be inferred from the injury certificate issued by the rural hospital, Rajgurunagar wherein it is certified that the Respondent No. 2/Complainant has not suffered any injury. He would further urge that in view of the civil dispute as to the property, the Respondent No. 2/Complainant has already initiated the Regular Civil Suit No. 152 of 2020 for partition and separate possession in which the Application for grant of temporary injunction is moved. It is claimed that the criminal complaint so also the suit was simultaneously initiated. As such, the claim is that the Petitioners are falsely implicated in the offence in question so as to twist the arms in the pending civil proceedings to have favourable settlement.

4. Learned counsel for the Respondent No. 2/Complainant so also learned APP supports the case of the prosecution justifying the charge-sheeting of the Petitioners. It is claimed that even if the offence punishable u/s 323 of IPC is non-cognizable, the

Respondent No. 2/Complainant, a handicap person was justified in lodging the complainant at belated stage after taking assistance of the local MLA. According to the learned counsel for the Respondent No. 2/Complainant there exist a civil dispute *inter-se* between the parties, which has led to initiation of suit for participation and separate possession being Regular Civil Suit No. 152 of 2020, which is pending on the file of Joint Civil Judge, Junior Division, Rajgurunagar.

5. Learned counsel for the Respondent No. 2 would further urge that the investigation depicts the sufficient materials to continue the prosecution against the Petitioners and as such, the Petition is liable to be dismissed.

6. We have appreciated the said submissions.

7. That the alleged incident of assault by the Petitioners on the Respondent No. 2 had taken on 20/03/2022. The Petitioner No. 2 appears to be son of the Petitioner No. 1 who happened to be the real brother of the Respondent No. 2/Complainant. The Complaint was lodged on 05/04/2022. It is claimed by the witnesses to the incident in question viz. wife of the Complainant, his son, his sister that the incident was disclosed to these witnesses immediately on the very same day of the incident. i.e. 20/03/2022. The fact

remains that from 20/03/2022 till 05/04/2022 neither the blood relationship who are witness nor the Respondent No. 2 chosen to lodge criminal complaint. The only explanation coming forth for lodging the complainant at belated stage is that the Respondent No. 2/Complainant is a specially abled person. Once the fact about disclosure of the offence to the witnesses namely son, wife and sister is taken into account, it was expected of the Respondent No. 2 to lodged the complaint as it was always open for his son, wife or sister to lodge the offence in question, the Respondent No. 2 being a disabled person.

8. The belated lodging of the FIR speaks of unnatural and afterthought approach on the part of the Respondent/Complainant. It gives space to the Complainant to cook up a after thought story to falsely implicate the accused person. It also speaks of unnatural conduct. The FIR which is belatedly lodged does not contain any explanation whatsoever, rather it depicts that it is upon intervention of local MLA, under the political pressure the offence came to be registered. Such intervention of the politician in the matter of lodging FIR that to at much belated stage inevitably give rise to suspicion which puts us on guard to look for possible motive and the explanation for delay

and to consider the effect of the same on the genuineness of the intention of the Complainant. Such belated lodging of the FIR pending without there being any explanation looses its trustworthiness and the prosecution version can be subjected to suspicion.

9. In support of the aforesaid observations, reliance can be placed on the judgment of the ***Kanhaiya Lal and Ors. vs State of Rajasthan*** reported in ***(2013) 5 SCC 655***. In the case in hand an unexplained delay and thereafter the political intervention gives a big dent to the case of the prosecution story and further the suspicious circumstances under which the offence came to be registered. Apart from above, the delay in lodging FIR gives rise to the opportunity of exaggeration and also suspicion. It also suspects the genuineness of the case of the prosecution.

10. Apart from above, the fact remains that the offence u/s 323 is non-cognizable one. The alleged offence u/s. 324 of IPC if appreciated, having regard to the evidence on record viz. the injury certificate, there is no iota of evidence to support the case of the prosecution as the Respondent No. 2 voluntarily visited the government hospital wherein it is certified that he has not suffered any injury. Such injury certificate is part and parcel of the charge-

sheet. The injury certificate is pursuant to the examination of the Respondent No. 2/Complainant on 20/03/2022 who voluntary went to the hospital but not to the police station. The injury certificate also does not narrate the case history of assault on the Respondent No. 2. As such, the ingredients of section 324 also cannot be inferred from the records particularly in absence of Respondent/Complainant having not suffered an injury.

11. As far as offence punishable under the provisions of Section 504 and 506 are concerned, such allegations are made at much belated stage without any explanation as observed herein above. The incident of alleged assault had claimed to have taken place in the open court-yard in front of the house of the Complainant that to at 12 noon. As such, it was expected of the Respondent No. 2 having suffered physical assault by use of the stick by the Petitioners to either give call for help to member of the public or to neighbors so as to get help. Absence of such conduct appears to be completely unnatural that being so the story narrated in the F.I.R. is not reposing confidence.

12. Apart from above, the fact remains that the pendency of the Civil Suit *inter-se* between the Petitioners and Respondent No 2 wherein the Respondent No. 2 is plaintiff seeking partition and

separate possession of the property sufficiently justify the claim of the Petitioners that the parties are at loggerhead and the Petitioners are sought to be implicated in the false offence so as to use the same for either arm twisting or in the civil proceedings.

13. If we appreciate the provisions of the Section 91 and 92 of the Rights of Persons with Disabilities Act, 2016, according to the Petitioners as claimed that the provisions of section 91 are not attracted in the case in hand, particularly having regard to the ingredients therein. Section 91 provides punishment for fraudulently availing benefits meant for the persons with benchmark disabilities. The necessary ingredients of the said Section cannot be spelt out in the case in hand particularly when the Petitioners are not claiming to be the person with the disability and has drawn or availed any benefits under such false claim.

14. The Section 92 provides for punishment for the offence of atrocity. The atrocity narrated in the FIR is that of physical assault by the Petitioners on the Respondent No. 2, who is a person with special ability. We have already observed herein above (a) the pendency of the civil proceedings, (b) belated lodging of FIR after 15 days of incident & (c) though the incident was reported on the very date of the incident i.e. 20/03/2023 to the blood relations, all

of them have not taken any steps and the specific admission given by the Respondent No. 2 that under the political interference offence came to be registered. This sufficiently justify the claim of the Petitioners of false implication in the offence.

15. That being so, relying on the judgment of the Apex Court in the matter of ***State of Haryana and Others vs. Ch. Bhajan Lal and Others*** reported in ***AIR 1992 SC 604*** particularly paragraph no. 108(5), case for showing indulgence is made out as belated lodging of FIR without any justification raises serious doubt about happening of the incident which led to the registration of the offence. Even otherwise the story of the prosecution neither reposes confidence nor there is iota of evidence to justify the prosecution of the Petitioners for the offence alleged.

16. The Apex Court in the aforesaid judgment has laid down the category of cases by way of illustration wherein extra ordinary powers under Article 226 or the inherent powers under Article 482 can be exercised. One of the example is where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is a sufficient ground for proceedings against the Accused. The discussions referred to

hereinabove, categorically fits into the aforesaid illustration given in the aforesaid judgment of the Apex Court.

17. Accordingly, for the reasons recorded hereinabove the Petition stands allowed in terms of prayer clause (aa).

(R. N. LADDHA, J)

(NITIN W. SAMBRE, J.)