



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 331 OF 2023

Varad s/o Gajendra Deshmukh
Age: 19 years, Occupation: Student,
Resident of, Yashwant Colony,
Fulsawangi Road, Mahagaon,
Tq. Mahagaon, Dist. Yavatmal
Pin : 441 701 (Maharashtra)
(Original Accused No.3 in FIR)

} ... Applicant

Versus

1. State of Maharashtra,
Through, the Police Station Officer Mahagaon,
Tq. Mahagaon, Dist. Yavatmal.
(Copy for Respondent No.1 to be served on the
Office of the Public Prosecutor, Bombay High
Court Bench at Nagpur)

2. Shaikh Rajik Shaikh Yunus
Age: 37 years, Occupation: Agriculturist,
Resident of, Village Wakodi,
Tq. Mahagaon, Dist. Yavatmal.
Pin : 445 205 (Maharashtra)

} ... Non-applicants

Mr. K.S. Narwade, Advocate for applicant.
Mr. N.R. Rode, APP for non-applicant No.1.
Mr. A.Z. Mirza, Advocate for non-applicant No.2.

CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.
DATE : 21.08.2023.

ORAL JUDGMENT: (PER: Vinay Joshi, J)

Heard. **Admit.** Heard finally by consent of both the
learned counsel for the parties.

(2) This is an application seeking to quash FIR in Crime No.673/2022 registered with Police Station Mahegaon, District – Yavatmal, for the offence punishable under Sections 143, 147, 149, 323, 504 and 506 of the Indian Penal Code.

(3) Learned counsel for the applicant seeks to quash FIR stating that no specific role is attributed to applicant – Varad. The allegations are of general nature and in absence of overt act, the provisions of Section 143 would not attract. Moreover, it is submitted that the incident was infact otherwise for which applicant party has lodged the report on the very day and thus, out of vengeance false report has been filed.

(4) On the other hand, Mr. Rode, learned APP as well as learned counsel appearing for the informant put resistance by submitting that FIR lodged within few hours from the occurrence bears specific name of applicant. There are eye-witnesses to the incident whose statements are recorded stating positive act of the applicant. It is submitted that the informant and his brother Shaikh Sadam sustained injuries for which medical certificates are produced and thus, it is not a case for quashing.

(5) The facts in brief are that one Rajik Shaikh Yunus lodged report regarding the occurrence. It is his contention that 07.11.2022 around 8:30 p.m. while he was proceeding towards his agricultural land, co-accused Gajanan accosted and started to abuse in filthy language. At relevant time, applicant – Varad and few others from applicant's party came and all of them started to beat the informant. Informant's brother Shaikh Sadam came to the rescue of informant, however, all of them abused and beat him and therefore, the report.

(6) We have gone through the investigation papers. The police have recorded statements of several witnesses including informant's brother. Since, the charge-sheet has not been filed, we have not referred the names of eye-witnesses. The police have collected injury certificate of both injured.

(7) On perusal of statement of the eye-witnesses, we do find reference regarding presence of applicant with allegation that he also joined others in beating the informant and his brother. The investigation paper also contains injury certificate of the informant stating the history of assault with injuries of simple nature. Injury

certificate of Shaikh Saddam is also on record. It requires to be noted that alleged incident took place on 07.11.2022 around 8:30 p.m. whilst they have been medically examined within three hours from the occurrence having injuries all over the body.

(8) The applicant's learned counsel by placing reliance on the decision of the Supreme Court in the case of ***Pandurang Chandrakant Mhatre and Ors. Vs. State of Maharashtra (2009) 10 SCC 773*** would submit that unless there is an overt act on the part of applicant, the provisions of Section 143 may not be invoked. As a matter of fact, mere membership of an unlawful assembly coupled with the common object would attract the offence. Sharing of common object is an essence of this Section. In said decision, we do not find any observations which could support the applicant's contention.

(9) To the next, applicant's learned counsel relied on the decision of this Court in case of ***Vishal and Ors. Vs. State of Maharashtra and anr. 2020 SCC OnLine Bom 2543*** to impress the said submission. In said case, on the basis of facts, this Court concluded that the allegations were vague about presence of family members. The said decision is distinguishable on facts as herein apart from mere

presence the informant and witnesses stated that the applicant also joined in the assault. True, none of them have described a specific role of the applicant, however, there are allegations about his presence and participation in the assault. Certainly, it is a matter of trial to be ascertained on the basis of evidence, whether the applicant had actually participated. Then by relying on the decision of Supreme Court in the case of *Dhariwal Tobacco Products Limited and Ors. Vs. State of Maharashtra and anr. (2009) 2 SCC 370*, it is submitted that if conviction is not possible then the prosecution needs to be quashed. There can be no dispute about said proposition of law. Basically, the matter would govern on the facts of each case.

(10) Reverting to the factual aspect FIR was lodged within four hours from the occurrence stating specific name of applicant, though general it is stated that applicant also participated in the assault. Therefore, certainly, it is not a case to say that even if the contents of FIR are accepted, they does not make out a *prima facie* case. At this juncture, we did not find material to hold that the allegations are false and fabricated. We also took a note that after registration of existing FIR the other party has lodged the report and

thus, it is a matter of appreciation. While exercising inherent jurisdiction, we have a limited scope to see whether *prima facie* case is made out. It is not permissible like a trial to decide the worth of the statements of the eye-witnesses unless exceptional circumstances are made out. On the canvass of direct material, we cannot undertake an exercise to martial the evidence to the entirety like a mini trial. Since, the FIR as well as police paper makes out a *prima facie* case, we are not inclined to exercise our inherent jurisdiction to stifle the prosecution at its embryo stage. In view of that, there is no merit in the application, hence, rejected.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

Prity