



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

CRIMINAL APPLICATION (APL) NO.577 OF 2020

1. Dinesh S/o Shivsing Solanke
Age 44 years, Occ: Farmer,
2. Santosh S/o Shivsing Solanke
Age 42 years, Occ: Farmer,
3. Rupesh S/o Shivsing Solanke
Age 40 years, Occ: Farmer,

All R/o Shelad, Tq. Balapur,
Dist. Akola.

...APPLICANT

...V E R S U S...

1. The State of Maharashtra,
Through Police Station, Balapur,
Tq. Balapur, Dist. Akola.
2. Fulsingh S/o Pratapsingh Pawar
Age 62 years, Occ: Farmer,
R/o Shelad, Tq. Balapur,
Dist. Akola.

...NON-APPLICANTS

Ms Ragini Swami, Adv. h/f Shri R.M. Tahaliyani, Advocate for
applicants.

Shri S.M. Ghodeswar, APP for non-applicant No.1.

Shri A.M. Tirukh, Advocate for non-applicant no.2.

CORAM :- VINAY JOSHI AND M.W. CHANDWANI, JJ.
DATED :- 07.11.2023.

ORAL JUDGMENT (PER : VINAY JOSHI, J.):

. Heard. **Admit.**

2. By consent of the learned counsel for the parties, the matter is taken up for final disposal.

Corrected as per
Hon'ble Court's
order dated
28.11.2023.

P.A.

3. By this application, applicant nos.1 to 3, who are accused in Crime No.707/2020 registered with Police Station, Balapur, District Akola for the offence punishable under sections 324, 323, 504, 506 read with section 34 of the Indian Penal Code, have approached this Court for quashing of the FIR by invoking section 482 of the Code of Criminal Procedure.

4. At the inception, learned counsel appearing for the applicants has not pressed the application to the extent of applicant no.1 – Dinesh and applicant no.2 – Santosh. However, she has argued to the extent of applicant no.3 – Rupesh by submitting that there is no *prima facie* case against Rupesh.

5. The State as well as learned counsel Shri Tirukh appearing for non-applicant no.2 would submit that FIR lodged by Fulsingh bears the name of Rupesh and thus it is not a stage for quashing the proceedings against him. Learned APP has made available the investigation papers.

6. The matter remains to the extent of applicant no.3 only. It is the prosecution case that there was a land dispute in between informant-Fulsingh and applicant-Dinesh. On the date of occurrence

around 9.30 am, while informant – Fulsing went to his land alongwith his son Pradip, nephew Sachin and Jaysing he was interrupted by Dinesh from taking water from the streamline. There was oral altercation in which the applicant no.1–Dinesh telephonically called co-accused. At the relevant time, the applicant – Dinesh was holding a stick by which he gave a blow at the hand of informant and his son was assaulted by co-accused by means of iron pipe and therefore, the aforesaid report came to be lodged.

7. Undisputedly, the police report though bears a reference of Rupesh however it is alleged that the co-accused have assaulted to the injured. We are surprised to note that the police have not recorded the statement of injured-Pradip, Sachin and Jaysing. The police paper contains statements of two witnesses, whose names we are not disclosing at this stage. Both witnesses have stated inconsonance with the contents of FIR meaning thereby only stated about the role of other two accused but spoke nothing against Rupesh.

8. In the circumstances, there is absolutely no material against Rupesh and therefore continuation of trial against applicant-Rupesh amounts to abuse of the process of Court.

9. In view of that, the following order :

10. The application to the extent of applicants – Dinesh and Santosh stands disposed of since not pressed.

11. The application to the extent of applicant – Rupesh is allowed.

Corrected as per
Hon'ble Court's
order dated
28.11.2023.

P.A.

12. FIR bearing Crime No.707/2020 registered with Police Station, Balapur, District Akola for the offence punishable under sections 324, 323, 504, 506 read with section 34 of the Indian Penal Code is hereby quashed and set aside to the extent of applicant – Rupesh only.

(M.W. CHANDWANI, J)

(VINAY JOSHI, J.)

Wagh