



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.417 OF 2023

- 1) Anand S/o Dilip Sutar,
Age-33 years, Occu:Agri.,
R/o-Matangwada, Georai,
Tq-Georai, Dist-Beed,
- 2) Pravin S/o Kisanrao Raut,
Age-35 years, Occu:Agri.,
R/o-At Ardha Masala, Post-Rui,
Tq-Georai, Dist-Beed.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Gondi Police Station,
Tq-Ambad, Dist-Jalna,
- 2) Vilas S/o Aasaram Maske,
Age-45 years, Occu:Social Work,
R/o-Gandhari, Tq-Ambad,
Dist-Jalna.

...RESPONDENTS

...
Mr. Ranjit Gaikwad Advocate h/f. mr. S.G. Kawade Advocate
for Applicants.
Mr. A.R. Kale, A.P.P. for Respondent No.1.
Ms. Ashwani A. Lomte Advocate for Respondent No.2
(Appointed).

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CORAM: SMT. VIBHA KANKANWADI AND
R.W. JOSHI, JJ.

DATE : 13th NOVEMBER, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure for quashing the proceedings in R.C.C. No.421 of 2022 pending before the learned Judicial Magistrate First Class, Ambad, District-Jalna arising out of the First Information Report (for short the "the FIR") vide Crime No.63 of 2022 registered with Gondi Police Station, Taluka-Ambad, District-Jalna on 21st February 2022 for the offence punishable under Section 452, 504, 506 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Gaikwad holding for Mr. Kawade Advocate for applicants, learned APP Mr. Kale for respondent No.1 and learned Advocate Ms. Lomte, who has been appointed to represent Respondent No.2. In order to cut short, it can be stated the learned Advocates for respective parties have argued in support of their contentions.

3. Perusal of the FIR would show that respondent No.2 claims that he is a social worker and President for Marathwada region of an organization by name, 'Bahujan Mukti Andolan Samajik Sanghatana'. He along with his friend Shivaji Ghule were at

Wadigodri around 2.30 p.m. on 19th February 2022. He received phone call from applicant No.1 (He has given the Mobile Phone Number), asking him where he is and why he takes photographs of the accused and that as they are not having sand, they are excavating sand from Godavari river. Applicant No.1 further stated that he is committing theft by excavating sand from Godavari river, why informant is cutting the ropes of *keni*. Applicant No.1 then told the informant that he is at the corner of the village (phata) and proceeding towards the house of the informant. Thereafter applicant No.1 disconnected the phone. After ten minutes the informant received phone call from his daughter, aged 13 years, stating that when she was along with the mother of the informant, four persons came in a white Scorpio vehicle, entered the house and one person was asking where the informant was. The mother of the informant told that he has gone out. Then that person told that wherever informant is hiding himself, he will not be spared and it should be made understood to him that if he is seen near Godavari river then his hands and legs would be cut. Thereafter, those persons left. Informant went to his house and found that his mother and children were in frightened condition. Then he lodged the report.

4. From the submissions on behalf of the applicants, it appears that they want to take the defence that no such incident has taken place. They are not running any business in sand and they have no vehicle for transportation of the sand. There is no evidence against the applicants which has been collected in the charge-sheet. All the witnesses are the relatives of the informant. There is delay in lodging the FIR as the incident is alleged to have taken place on 19th February 2022 and the FIR has been lodged on 21st February 2022 and the said delay has not been explained. The present FIR is nothing but an attempt to extract money from the applicants. It would then be unjust to ask the applicants to face the trial. Applicant No.1 is suffering from chronic kidney disease and has been advised for transplant of the kidney.

5. Except those submissions, there is nothing on record to show that there was any previous enmity between the applicants and the informant. The informant has quoted the specific number of the mobile phone which he had received and it appears to be the number of applicant No.1. From the document, discharge summary given by Medicovert Hospital, where applicant No.1 was admitted on 27th October 2022 and discharged on 29th October 2022, the Mobile number quoted

therein is also same. When the FIR was lodged, it was also under Section 379 of the Indian Penal Code but at the time of charge-sheet, that section has been dropped, which appears to be rightly dropped. There is statement of the mother of the informant and daughter. They were the only persons who were present inside the house at the relevant time. Further, statement of Shivaji Ghule would show that he was along with the informant at Wadigodri at the relevant time. Taking into consideration all these aspects, there is, prima facie, evidence against the applicants and therefore, this is not a fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure.

6. The Application stands rejected.

7. The fees of learned Advocate Ms. Ashwani A. Lomate, appointed to represent respondent No.2, is quantified at Rs.5000/-, to be paid by the High Court Legal Services Sub Committee, Aurangabad.

[R.W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE