



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1819 OF 2023

- 1) Dinkar S/o Mango Ghodake,
Age-74 years, Occu:Agricultural,
- 2) Sudhakar S/o Dinkar Ghodake,
Age-35 years, Occu:Agricultural,
- 3) Pralhad S/o Trambak Thosar,
Age-60 years, Occu:Agricultural,
- 4) Nivrutti S/o Narayan Anasune,
Age-33 years, Occu:Agricultural,
- 5) Atul S/o Hari Ghodke,
Age-32 years, Occu:Agricultural,
- 6) Narayan S/o Dnyaneshwar Ghodke,
Age-19 years, Occu:Agricultural,
- 7) Pravin S/o Samadhan Ghodke,
Age-30 years, Occu:Agricultural,

All Applicants R/o- at Sawlatbara,
Taluka-Soyegaon, District-Aurangabad.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through the Investigating Officer,
Fardapur Police Station,
Aurangabad (R),
- 2) Sheikh Ibrahim @ Sandu Shaikh Ismail,
Age-32 years, Occu:Agricultural,
R/o-at Sawalatbara, Taluka-Soyegaon
District-Aurangabad.

...RESPONDENTS

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Mr. Dhananjay A. Naik Advocate for Applicants.
Mr. V.K. Kotecha, A.P.P. for Respondent No.1.
Mr. V.S. Wakale Advocate for Respondent No.2 (**Absent**).
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**CORAM: SMT. VIBHA KANKANWADI AND
R.W. JOSHI, JJ.**

DATE : 19th 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, initially for quashing the First Information Report (for short "the FIR") vide Crime No.45 of 2023 dated 3rd April 2023 registered with Fardapur police station, Aurangabad Rural, District-Aurangabad and after amendment when the charge-sheet is filed, for quashment of the proceedings i.e. Charge-sheet No.72 of 2023 pending before the learned Judicial Magistrate First Class, Soyegaon, District-Aurangabad for the offence punishable under Sections 143, 147, 148, 149, 324, 323, 325, 504, 506 of the Indian Penal Code.

2. Heard learned Advocate Mr. Naik for the applicants and learned APP Mr. Kotecha for respondent No.1. Learned Advocate for respondent No. 2 was absent when called. In order to cut

short, it can be stated that both the sides have made submissions in support of their respective contentions.

3. Perusal of the FIR lodged by respondent No.2 would show that the informant was in Government Hospital, Buldhana when he lodged the report on 3rd April 2023. The FIR is in respect of the incident alleged to have been taken place around 2.00 p.m. of 28th February 2023 at Savaladbara, Taluka-Soyegaon, District-Aurangabad. The informant says that he had taken his tractor for agricultural activities in the field of one Ismail Tadvi. He went short of diesel and therefore, he himself and his father Ismail Shaikh Lukman Shaikh were proceeding towards the village by walk from Government road (*Panand Rasta*). When they were near the field of applicant No.1 - Dinkar, applicant No.1 intercepted them and asked as to why they are not taking the tractor in his field and he started abusing. Informant asked him as to why he is abusing. At that time applicant No.1 assaulted him by wooden log. As a result of which, he fell down. His father ran away towards the village. Applicant No.1 then called his relatives i.e. other accused, applicant Nos. 2 to 7, by giving phone call to them. All the other accused came running and accused No.2 - Sudhakar thereafter assaulted him with the pipe

of sprinkler towards the back side of left leg. It is then stated that applicant No.3 - Pralhad assaulted him on his back with stick. Applicant No.4 - Nivrutti assaulted him by fists and kicks blows. The other accused persons had assaulted informant by kicks and fists blows. He was given threat to kill and then all of them fled. The informant says that he had received fracture towards the left leg ankle joint.

4. Perusal of the contents of the charge-sheet would show that there is a statement of father who supports the story till applicant No.1 assaulted the informant and then he says that due to fear that he would also be assaulted, he ran towards the village. Then he says that he came to know from his relatives that the informant and other relatives had gone to Police Chowki and then Police referred the informant for medical check-up. Then his son has been admitted to hospital. The other witnesses, namely, Sandu Khan Dawood Khan Pathan and Firoj Khan Pathan have stated that they came to know about the incident after it was told to them by the father of the informant and then about admission of the informant to the hospital. Thus, it is to be noted that except the bare statements of the informant, there is nothing as against applicant Nos.2 to 7. The fact about

involvement of the other accused appears to be exaggerated and unbelievable for the simple reason that in the entire charge-sheet there is no distance mentioned from the spot to the village. According to the informant, when he fell down after he was assaulted by applicant No.1, applicant No.1 gave phone call to the other accused persons and then they came. Whatever injury the informant has suffered is simple in nature as regards the head is concerned and then the ankle joint had fracture. As regards the fracture, there is no evidence in the form of discharge card from hospital at Buldhana. Therefore, when informant had the opportunity to ask for help and when his father, who had initially seen applicant No.1 assaulting the informant, went back to the village, he could have asked for help in the village and brought certain persons along with him to the spot. No such action appears to have been taken and therefore, as regards the involvement of applicant Nos. 2 to 7 is concerned, it is unbelievable and appears to be with mala fide intention simply to pressurize applicant No.1 as applicant Nos. 2 to 7 appears to be relatives of applicant No.1. Therefore, as regards applicant Nos. 2 to 7 are concerned, definitely case is made out for quashment of the FIR and further proceedings.

5. However, as regards applicant No.1 is concerned, definitely there is some evidence for taking cognizance under Section 324 of the Indian Penal Code or upon submission of medical certificate it may go up to Section 326 of the Indian Penal Code (though Section 325 appears to have been invoked), with Section 504, 506 of the Indian Penal Code. It is to be noted that, while hearing the matter when we have shown disinclination to grant any relief to applicant No.1, learned Advocate for the applicants, after taking instructions from applicant No.1, has sought withdrawal of the application as against applicant No.1. We therefore, proceed to pass following order:-

ORDER

(I) The Application stands partly allowed.

(II) The Application as against applicant No.1 - Dinkar S/o Mango Ghodake, stands dismissed as withdrawn.

(III) Application as against applicant Nos. 2 to 7 stands allowed.

(IV) The proceedings in Charge-sheet No.72 of 2023 pending before the learned Judicial Magistrate First Class, Soyegaon, District-Aurangabad, arising out of the First Information Report vide Crime No.45 of 2023 dated 3rd April 2023 registered with Fardapur Police Station, Aurangabad Rural, District-Aurangabad, for the offence punishable under Sections 143, 147, 148, 149, 324, 323, 325, 504, 506 of the Indian Penal Code, stands quashed and set aside as against applicant Nos.2 to 7. i.e. 2) Sudhakar S/o Dinkar Ghodake, 3) Pralhad S/o Trambak Thosar, 4) Nivrutti S/o Narayan Anasune, 5) Atul S/o Hari Ghodke, 6) Narayan S/o Dnyaneshwar Ghodke and 7) Pravin S/o Samadhan Ghodke.

[R.W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/NOV24