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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2647 OF 2022

ASHOK S/O. BABURAO TAMBE AND OTHERS.
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

...

Mr. R.G. Joshi, Advocate for applicants.
Mrs. P.R. Bharaswadkar, APP for State.
Mr. A.N. Sabnis, Advocate for respondent No.3.

CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.

DATE : 22nd OCTOBER, 2024.

P.C. :-

1. The applicants have approached this Court under Section 482 of Cr.PC. for quashment of FIR in crime No. 291 of 2022 dated 15.4.2022 for the offences under Sections 353, 332, 143, 147, 149, 504, 283 of IPC and Section 143, 103 of the Maharashtra Police Act, 1951 as well as consequential proceeding in R.C.C. No., 370 of 2022 pending before the JMFC, Rahuri. The applicants have also prayed for quashment of another FIR in Crime No. 295 of 2022, dated 15.4.2022, for offences punishable under Sections 53 (3) of the Bombay Village Panchayat Act and Sections 477 and 188 of the IPC so also consequential proceeding in SCC No. 877 of 2022 pending before Learned JMFC, at Rahuri.

2. The respondent No.2 herein lodged report dated 12.4.2022 alleging that on 12.4.2022, he was on fixed point duty at a square in village Tambhere, Taluka Rahuri. At about 1.30 p.m. mob of 50 to 60 persons arrived at square with a blue pole and flag. They started digging the land. He informed those persons that he is posted at fixed point by Police Station, Rahuri and asked them to produce permission for work undertaken by them. Without permission they were bent upon to install flag at the square. Although he made every attempt to prevent them from carrying illegal work, they obstructed him in performance of his duty. They were abusing him. The ladies amongst the mob were also abusing him. Members of unlawful assembly man-handled him and obstructed him in performance of his official duty. Immediately, he passed on information to the Police Inspector. The police staff arrived on the spot. The members of unlawful assembly abused police staff. The police officers arrested some of the members of unlawful assembly. On the basis of said report, Crime No. 291 of 2022 has been registered with Rahuri Police Station. After conclusion of investigation, charge sheet has been filed. Consequently, RCC No. 370 of 2022 is pending for trial before Learned JMFC, Rahuri.

3. Respondent No.3 lodged another report dated 15.4.2022 with allegation that since 2020, she has been posted as Gram Sevak at village Digras, Taluka Rahuri. On 14.3.2022, accused Swapnil Bharat Tambe and others, members of Ekata Tarun Mitra Mandal, made application seeking permission to install blue flag in Gaathan land of Gram Panchayat, Tambhere. Although they were not permitted to do so, in the night of 14.3.2022, they raised construction of brick and cement platform for installation of iron pole. On 17.3.2022, the Gram Panchayat

received application from villagers seeking removal illegal construction. On 19.3.2022, the Tahsildar and Police Inspector from Rahuri, conducted a meeting of villagers. Thereafter, a meeting of Gram Panchayat was convened. In that meeting application seeking permission to install the blue flag in gaathan land was rejected and correspondence was made to all concerned for removal of encroachment. Again on 31.3.2022 meeting was convened by Tahsildar and Police Inspector in which decision was taken to shift the flag at alternate place. On 1.4.2022, accused persons installed flag pole at alternate place. However, on 14.2.2022, accused persons gathered at Sangamner Road and illegally installed the flag pole. Although they were served with notice dated 12.4.2022 for removal of flag, accused persons failed to act upon the communication. Consequently, crime No. 295 of 2022 has been registered against them. On conclusion of investigation, charge sheet has been filed and proceeding is pending for trial in SCC No. 877 of 2022.

4. Mr. R.G. Joshi, learned advocate for the applicants vehemently submits that applicants belongs to Scheduled Caste. They have been falsely implicated in aforesaid crime. The applicants had made representations to the Tahsildar Rahuri as regards the discriminatory treatment towards Scheduled Caste community in village Tambhere and also requested him to take legal action against the 21 named persons. Applicant No.6 alongwith members of Ekata Tarun Mitra Mandal had filed application to the Assistant Executive Engineer, requesting not to remove the flag. The applicant Nos. 26 and 29 have also filed application raising protest against administration. Enraged by aforesaid representations, respondent Nos. 2 and 3 lodged false reports implicating large number of persons belonging to Scheduled Caste in

subject crime. Even many Scheduled Caste ladies are made accused. He would submit that impugned FIRs are false and fictitious.

5. Mr. Joshi would further invite our attention to the contents of the charge sheet and endeavors to point out contradictions in the statements of witnesses, particularly as to exact time of incident. He would, therefore urge that the continuation of criminal proceeding against the applicants would be abuse of process of law. As such, this is fit case for exercise inherent powers to quash and set aside the FIR and consequential criminal proceeding.

6. Per contra, Mrs. P.R. Bharaswadkar, learned APP and Mr. A.N. Sabnis, learned advocate for respondent No.3 would submit that contents of the FIR and evidence collected during the investigation clearly makes out a case against all the applicants. They urge this court to not to exercise of inherent powers in facts of the case.

7. We have considered the submissions advanced on behalf of learned advocates for respective parties. Mr. Rahul Joshi, endeavors to contend that both FIRs are with similar allegations at the instance of respondent No.2 and 3. Therefore, independent offences could not have been registered for one and the same incident.

8. On careful scrutiny of the stipulations, in the respective reports, we find that Crime No. 291 of 2022 is registered on report by a police officer with specific allegation that members of unlawful assembly obstructed him from discharge of official duty, so also, abused and man-handled him. So far allegations in the FIR no. 295 of 2022, respondent

No.3 reported being Gram Sevak of Village Panchayat, Digras that unlawful assembly raised illegal construction in absence of permission from the Gram Panchayat on Gaothan land and fixed a flag at a public place. Although accused persons were noticed to remove the encroachment, they failed act on notice. As such, they alleged to have committed offence under Section 53(5) of the Maharashtra Village Panchayat Act, 1958 and Sections 447 and 188 of IPC.

9. The close scrutiny of both impugned FIRs would depict that those have been registered for distinct offences on the basis independent reports filed by the Police Officer and Gram Sevak respectively. The allegations stipulates different incidents. Therefore, we cannot countenance with submissions advanced on behalf of the applicants that both the FIRs are for one and the same incident.

10. Mr. Joshi would further submit that no offence can be made out from the contents of the FIR against the applicants. However, we find that contents of FIR, prima facie, suggest commission of offences. Further, charge sheet filed on conclusion of investigation, contains sufficient material depicting presence of accused persons at the spot of incident or that they were members of unlawful assembly. Further, it would not be possible for this Court to enter into deeper inquiry as regards to the individual role of each of the applicants, particularly when offence is attributed against unlawful assembly of which the applicants were members. In that view of the matter, we are of the considered opinion that no interference is warranted in exercise of inherent powers of this court under Section 482 to quash the FIR. Hence matter needs to be relegated for trial in accordance with law.

10. Consequently, there is no merit in the application.
Application stands dismissed.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-