



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2231 OF 2020

- 1) Pandu Misu Rathod,
Age-55 years, Occu:Labour,
R/o-2/96, Palsi B Tanda,
Talamadugu, Adilabad (Telangana),
- 2) Bebibai Khandu Rathod,
Age-39 years, Occu:Household,
R/o-Junapani, Taluka-Mahur,
District-Nanded,
- 3) Priyanka Rajesh Rathod,
Age-31 years, Occu:Household,
R/o-Junapani, Taluka-Mahur,
District-Nanded,
- 4) Kantabai Misu Rathod,
Age-28 years, Occu:Household,
R/o-Junapani, Taluka-Mahur,
District-Nanded,
- 5) Sanjana Misu Rathod,
Age-35 years, Occu:Household,
R/o-Junapani, Taluka-Mahur,
District-Nanded,
- 6) Nikhil Khandu Rathod,
Age-20 years, Occu:Education,
R/o-Junapani, Taluka-Mahur,
District-Nanded,
A/P-Nanded,
- 7) Nikhita Khandu Rathod,
Age-25 years, Occu:Education,
R/o-Junapani, Taluka-Mahur,
District-Nanded,
A/P-Nanded.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
- 2) Kum. Humani D/o Bandu Rathod,
Age-16 years, Occu:Education,
R/o-Junapani, Taluka-Mahur,
District-Nanded,
Under Guardian
Digambar S/o Nursing Jadhav,
R/o-Malkaguda Tanda,
Taluka-Mahur, District-Nanded.

...RESPONDENTS

WITH

CRIMINAL APPLICATION NO.2215 OF 2020

- 1) Khandu S/o Misu Rathod,
Age-55 years, Occu:Agri.,
R/o-Junapani, Taluka-Mahur,
District-Nanded
- 2) Rajesh S/o Misu Rathod,
Age-39 years, Occu:Agri.,
R/o-Junapani, Taluka-Mahur,
District-Nanded.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
- 2) Kum. Humani D/o Bandu Rathod,
Age-16 years, Occu:Education,
R/o-Junapani, Taluka-Mahur,
District-Nanded,
A/P-C/o- Nursing Pandu Jadhav,
At-Malkaguda Tanda, Taluka Mahur,
District-Nanded. Under Guardian
Digambar S/o Narsing Jadhav,
R/o-Malkaguda Tanda,
Taluka-Mahur, District-Nanded.

...RESPONDENTS

...
Mr. R.B. Ade Advocate for Applicants in both Applications.
Mr. A.V. Lavte, A.P.P. for Respondent No.1 in both the Applications.
Mr. R.M. Bhagwat Advocate h/f. Mr. G.P. Shinde Advocate for Respondent No.2 in both Applications.
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 21st OCTOBER, 2024

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

1. Both these Applications have been filed under Section 482 of the Code of Criminal Procedure. Both the Applications are in respect of same offence. However, it is to be noted that Criminal Application No.2231 of 2020 has been filed by the other accused persons for quashing the the First Information Report (for short "the FIR") vide Crime No.92 of 2020 registered with Shindkheda Police Station, District Nanded for the offence punishable under Sections 302, 328, 143, 147, 149, 323 of the Indian Penal Code.

2. So far as Criminal Application No.2215 of 2020 is concerned, the same is filed for quashing and setting aside the entire charge-sheet No.43 of 2020 filed against the applicants therein after investigating the offence vide Crime No.92 of 2020

registered with Shindkheda Police Station, District Nanded for the offence punishable under Sections 302, 328, 143, 147, 149, 323 of the Indian Penal Code.

3. It will not be out of place to mention here that the FIR is against in all nine persons, but the charge-sheet came to be filed only against two persons i.e. applicants in Criminal Application No.2215 of 2020 i.e. original accused Nos.1 and 2. After hearing the learned Advocate for the applicants therein, when disinclination is shown to grant any relief to the applicants, learned Advocate for the applicants, on instructions sought withdrawal of the said Application. Accordingly, Criminal Application No.2215 of 2020 stands disposed of as withdrawn.

4. In respect of the applicants in Criminal Application No.2231 of 2020 we have heard the learned Advocate for the applicants, learned APP for the State as well as learned Advocate for respondent No.2.

5. Respondent No.2 – informant is a minor daughter of the deceased Bandu Rathod, studying in 9th standard at that time. She contended in the FIR that her father has received five acres of land, upon partition of the ancestral property, at village

Junapani. Then her father had purchased another four acres of land at Wai Bazar. Her parents were residing in Nanded in connection with the education of the informant. But due to Covid Pandemic situation, since March 2020 the parents went to stay at Junapani, whereas she has gone to stay with her grandfather Pandu Jadhav at Malkaguda Tanda. She also states that since her parents were earlier residing at Nanded, their five acres of land at Junapani was cultivated by her uncle Khandu i.e. original accused No.1. After her parents went to Junapani in Covid Pandemic, they started cultivating their agricultural land, whereupon her uncle Khandu and another uncle Rajesh (original accused Nos.1 and 2) raised dispute with her father. There was also a meeting of the panchas from her community about twenty days prior to the incident. The panchas had tried to settle the dispute and she came to know about the same from her father. Then she alleges that on 10th June 2020 her father contacted her maternal uncle at about 7.00 to 7.15 a.m. It was disclosed by the maternal uncle that original accused Nos.1 and 2 as well as the present applicants had assaulted her parents at Junapani and they had forcibly administered poison to her mother and had thrown poison on the person of her father. The parents were taken to hospital at Mahur and thereafter they were taken to hospital at Yavatmal. Her maternal uncle, his wife and

grandfather went to Yavatmal on 11th June 2020 where her mother was admitted in ICU and father was admitted in general ward. She also went with them. Her father was trying to talk with her, however, due to throat problem, he was unable to speak properly. Her father was then shifted to ICU around 2.00 p.m. and then she returned along with her grandfather to village around 3.00 p.m. Her parents expired on 16th June 2020.

6. As it appears from the charge-sheet, wherein the investigating officer himself has stated that the charge-sheet is only against two accused persons i.e. Khandu Misu Rathod and Rajesh Misu Rathod, as their involvement is seen. However, he says that in respect of involvement of present applicants, the investigation is going on and if concrete evidence is collected then charge-sheet will be filed under Section 173(8) of the Code of Criminal Procedure.

7. We had asked the learned APP to take the instructions from the investigating officer, as to whether any further investigation has been carried out against the present applicants in view of the fact that charge-sheet against original accused Nos.1 and 2 was filed on 7th September 2020. Upon instructions, the learned APP stated that no further investigation has been

taken up. Thus for about four years there is absolutely no further investigation. The hanging sword cannot be put on the heads of the applicants for indefinite period by stating that the investigating officer has prayed that he would continue the investigation and as and when the evidence will be available then he will file the charge-sheet. The name of the present applicants was disclosed in the FIR itself and therefore, there should be simultaneous collection of evidence against all the accused. At a later point of time, the investigating officer without any reason cannot ask for continuation of further investigation against some of the accused. We take that there is no evidence against the present applicants and therefore, this is a fit case where we should quash and set aside the FIR against the present applicants. Hence the following order:-

ORDER

(I) Criminal Application No.2215 of 2020 stands disposed of as withdrawn in view of the prayer for withdrawal as a result of disinclination shown as against the applicants therein.

(II) Criminal Application No.2231 of 2020 stands allowed.

(III) The First Information Report Crime No.92 of 2020 registered with Shindkheda Police Station, District Nanded for the offence punishable under Sections 302, 328, 143, 147, 149, 323 of the Indian Penal Code, stands quashed and set aside as against applicant Nos. 1 to 7 i.e. 1) Pandu Misu Rathod, 2) Bebibai Khandu Rathod, 3) Priyanka Rajesh Rathod, 4) Kantabai Misu Rathod, 5) Sanjana Misu Rathod, 6) Nikhil Khandu Rathod and 7) Nikhita Khandu Rathod.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/OCT24