



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 CRIMINAL APPLICATION NO.3554 OF 2024

Abdul Mujib Gulam Mustafa Kureshi (Saudagar),
Age 52 yrs., Occ. Medical Officer,
R/o in front of old Bus Stand, Majalgaon,
Tq. Majalgaon, Dist. Beed.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through it's Investigating Officer,
Police Station, Majalgaon (City),
Tq. Majalgaon, Dist. Beed.
- 2 Shahanavaj Salim Khan,
Age 20 yrs., Occ. Education,
R/o Old Court Road, Majalgaon,
Tq. Majalgaon, Dist. Beed.

... Respondents

...

Mr. S.S. Solanke, Advocate h/f Mr. M.P. Kale, Advocate for applicant
Mr. N.R. Dayama, APP for respondent No.1

...

CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.

DATE : 06th DECEMBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code

of Criminal Procedure, 1973 for quashing proceedings in Regular Criminal Case No.254/2023 pending before learned Judicial Magistrate First Class, Majalgaon, Tq. Majalgaon, Dist. Beed arising out of First Information Report vide Crime No.121/2023 dated 07.04.2023 registered with Police Station, Majalgaon (City), Tq. Majalgaon, Dist. Beed, for the offence punishable under Sections 147, 148, 326, 323, 504, 506 read with Section 149 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. S.S. Solanke holding for learned Advocate Mr. M.P. Kale for applicant and learned APP Mr. N.R. Dayama for respondent No.1. Taking into consideration the contents of First Information Report, material in the charge sheet and submissions on behalf of applicant, it is not even necessary to issue notice to respondent No.2.

3 Perusal of First Information Report would show that respondent No.2 was admitted in the hospital on 06.04.2023 when the said First Information Report was taken. It bears the endorsement of the Doctor that the patient was conscious and oriented. Respondent No.2 was 19 years old at that time and says that when he had gone to the construction site of his new house, which is on the spot in front of old Bus Stand at Majalgaon around 6.30 p.m. on 03.04.2023, at that time one Habibabee Karim Kureshi

along with her two daughters residing in the neighbour were found stealing the bricks, iron rods, pipes from the construction site. He, therefore, asked them why they are stealing those articles. They should wait as he would file complaint, at that time, Habibabee took a stone from the said place and after catching hold of his neck assaulted him with the said stone on his nose, as a result of which he felt giddiness and vomited and thereafter two daughters of said Habibabee viz. Taslima and Tayyaba assaulted the informant with kicks, fists on the stomach, hand, thigh of the informant, causing him covert injury. After hearing the voice of quarrel Habiba's son Salman and brother Mujib Mustafa Kureshi (Saudagar) i.e. present applicant went there. Salman assaulted him with fists on the face and eye of the informant, whereas the present applicant had also given kicks and fists blows. They threatened informant that if he makes any kind of complaint, then he as well as his family members would face dire consequences. After hearing the voice of quarrels, brother of informant came to the said place. He was also assaulted by all the accused persons. He says that in the said act his brother had sustained abrasions to his hands. The persons residing in the neighbourhood separated them and then the father of the informant took him to Police Station, who had then referred him to Hospital. From Majalgaon Hospital he was shifted to Government Hospital, Beed, where he was then admitted. X-ray of his nose was done, which showed that he had sustained fracture.

4 Thus, it is to be noted from the First Information Report that specific role has been attributed to the present applicant. The offence under Section 326 of the Indian Penal Code may not be against the applicant exclusively, as the chronology of events show that he arrived at the scene after Habiba had already assaulted informant on his nose with the help of stone. However, as regards Sections 143 and 147 of the Indian Penal Code can be said to have been made out against him, *prima facie*. Though Section 149 of the Indian Penal Code has also been invoked, it would be for the Trial Court to see whether the act would come as 'common object' or 'common intention' i.e. under Section 34 of the Indian Penal Code. Then it comes to the subsequent event after arrival of the applicant and the assault of the brother of informant. The medical evidence supports the First Information, especially on the point of fracture to the nose. Statements of witnesses have been recorded. Apart from the statement of brother of informant, there are statements of neighbouring persons, who have categorically stated that they had seen the incident. Under the said circumstance, when there is *prima facie* evidence, we do not find this to be a fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure. Application stands rejected.

(ROHIT W. JOSHI, J.)

agd

(SMT. VIBHA KANKANWADI, J.)