



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

CRIMINAL APPLICATION NO. 3117 OF 2022

1. Vishwanath Narayan Gangawane
(Application for applicant no.1 is dismissed as withdrawn)
2. Triratna Vishwanath Gangawane
3. Amit Vishwanath Gangawane
(Application for applicant no.3 is dismissed as withdrawn)
4. Akshay Vishwanath Gangawane
(Application for applicant no.4 is dismissed as withdrawn)
5. Vijay Kashinath Gangawane
6. Ashwini w/o Amit Gangawane
7. Madhuri w/o Triratna Gangawane

...Applicants

Versus

1. The State of Maharashtra
Through Police Inspector,
Chawni Station Palam,
Tq. and Dist. Aurangabad.
2. Shekhar s/o Raju Shirke

...Respondents

...

Advocate for Applicants : Mr. Angad L. Kanade
APP for the Respondent No.1/State : Mr. V.K. Kotecha
Advocate for Respondent No.2 : Mr. N.E. Deshmukh

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 8 JANUARY 2024

FINAL ORDER [Shailesh P. Brahme, J.] :

. Heard both the sides finally.

2. By earlier order dated 25.07.2023, the applicant nos. 1, 3 and 4 have been permitted to withdraw the application to their extent. Remaining applicants are invoking jurisdiction under Section 482 of the Code of Criminal Procedure for quashing charge-sheet bearing No.110/2021 which has culminated in registration of RCS No.2137/2021 for the offences punishable under Sections 323, 324, 504, 143, 144, 147, 149, 201 of the Indian Penal Code.

3. The respondent no.2/complainant has filed complaint on 19.12.2020 with the Cantonment Police Station, Aurangabad, alleging an assault on him on 18.12.2020 at the place of his residence. He has alleged to have sustained injuries on his head. His nephew and sister were also assaulted on their head and hand respectively. All the applicants have been alleged to be present and participated in the overt act. The charge-sheet is filed on 06.08.2021 against all the applicants.

4. The learned Counsel for the applicants submits that the application to the extent of applicant nos. 1, 3 and 4 has already been withdrawn against whom incriminating role can be found. Remaining applicants have not inflicted any injuries by any weapon. The allegations against them are omnibus. No offence as such can be made out against them.

5. He would submit that the complaint lodged by the respondent no.2 is in fact a counterblast to the complaint of Narayan lodged on the same day against the

informant and others bearing C.R. No.0396/2020 of Cantonment Police Station, Aurangabad. The present informant and others have inflicted serious injuries to the applicant no.2 and others. The injuries alleged to be inflicted by the applicants in the present matters are simple in nature. The allegations are concocted and made due to previous enmity. He would submit that it is an abuse of process of law to make the applicants to face the prosecution.

6. The learned APP as well as the learned Counsel for the respondent no.2 oppose the submissions of the applicants. It is submitted that all the applicants have formed unlawful assembly with intention to assault the respondent no.2. First Information Report and the statements of the witnesses have made out a strong prima facie case. The witnesses have sustained injuries. There are eye-witnesses namely Umesh, Jaya and Komal who have attributed incriminating role against the applicants. Our attention is invited to the injury certificates which are part of the charge-sheet to show the gravity of the offence. They pray to dismiss the application.

7. With the assistance of learned Counsels, we have gone through FIR and the statements of the eye-witnesses namely Umesh, Jaya, Komal and Chandrakant. Specific role has been attributed to applicant no.1, 3 and 4. They are alleged to have used weapons. However, the allegations against the remaining applicants are

vague. Except their presence at the relevant time, nothing can be inferred against them. There is no material on record to show that they have actually aided the other applicants who have withdrawn the present application.

8. We find force in the submissions of the learned Counsel for the applicants that on the same date, an offence bearing C.R. No.0396/2020 is also registered by one of the family members of the applicants, Narayan against the informant and others. There appears to be previous enmity between two families. The possibility of falsely implicating the applicant nos. 2, 5, 6 and 7 cannot be ruled out. We are of the considered view that no offence can be made out against these applicants. The injury certificates which are pointed out by the informant may not take the case any further.

9. Applying principles laid down by the Supreme Court in the case of State of Haryana and Ors. Vs. Bhajan Lal and Ors., AIR 1992 SC 604, we find that applicant nos. 2, 5, 6 and 7 have made out a case for quashment.

10. The learned Counsel for the applicants seeks to rely upon order dated 08.03.2023 passed in Criminal Writ Petition No.977/2021. The facts of that case are distinguishable. We do not propose to rely upon the same.

11. We allow the application and quash and set aside the charge sheet bearing

No.110/2021 in RCS No.2137/2021 pending before the learned Judicial Magistrate,
First Class, Aurangabad to the extent of applicant nos. 2, 5, 6 and 7 only.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

Najeeb.