



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1233 OF 2023

1. Sojarbai w/o Tukaram Pawar,
age 43 years, Occ. Household
2. Tukaram s/o Babu Pawar,
age 54 years, Occ. Labour.
3. Sonali w/o Rama @ Rameshwar Pawar,
age 25 years, Occ. Household.
4. Shriram s/o Babu Pawar,
age yrs, Occ. Labour.
5. Pappu s/o Shriram Pawar,
age 26 years, Occ. Labour.
6. Datta s/o Shriram Pawar,
age 28 yrs, Occ. Labour.
7. Raju s/o Ram Lashkare,
age 37 yrs, Occ. Labour,
All are R/o Wadar Lane,
Shirsala, Tq. Parali V, Dist Beed. Petitioners/orig. Accused.

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Shirsala Police Station, Tq. Parali,
District Beed.
2. Kishor s/o Kacharu Ghatmal,
age 37 yrs, Occ. Service,
Address- Police Station, Shirsala,
Tq. Parali, Dist. Beed. Respondents.
(Resp No.2 orig complainant)

...

Advocate for Petitioners : Mr. A.A. Phad
APP for Respondents: Mr. N R Dayama

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

Dated : 8th OCTOBER, 2024

FINAL ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The petitioners have approached this Court seeking quashment of the FIR in Crime No.63 of 2020 registered with Police Station Shirsala, Tq. Parli (V) for the offences punishable under sections 307, 353, 332, 336, 143, 147, 149, 323, 504, 506 and 188 of the Indian Penal Code so also section 51-B of Disasters Management Act, 2005 and consequential proceeding in RCC No.20 of 2020 pending before the JMFC, at Parli.

2. Respondent no.2 filed a report dated 25.3.2020 alleging that he is posted at Police Station, Shirsala as police naik. On 25.3.2020 while he was patrolling along with co-employee Mr. Jetewad in village Shirsala, accused persons were sitting in front of their house. He informed accused persons that in view of the order passed by the District Magistrate under section 144 of the Cr.P.C. nobody is allowed to enter on public road, further, directions of District Magistrate are issued to contain Covid-19 and asked accused persons to get back into the home. Accused persons refused to follow his instructions and questioned his authority to issue such instructions and apprehended him. Accused Ashok Pawar hit him by a wooden log causing grievous injury on index finger. Due to this attack by the accused, both of them fell from the motor cycle. Accused Ram Tukaram Pawar hit a big stone on his back and pelted the stone and bricks on back of

his companion police Naik Jetewad. Accused Vikas Arjun Mitkar assaulted them and apprehended of life. Rest of the accused and ladies assaulted them by fist and kicks. As such, accused persons obstructed him in discharge of his official duty. Thereafter, PSI Mr. Dongare alongwith other staff arrived at the spot and dispersed the accused persons. He was thereafter referred to the Civil Hospital, Shirsala where he recorded his statement leading to registration of the aforesaid crime. It appears that respondent no.2 has also recorded his supplementary statement elaborating further details of individual acts of the accused persons in the crime. Investigation progressed and finally charge-sheet has been filed against in all 12 accused persons including the applicants.

3. Mr. A.A. Phad, learned advocate appearing for the petitioners submits that all family members of petitioners have been falsely implicated in the aforesaid crime. In fact, petitioners had also suffered injuries due to attack by respondent no.2. Rameshvar Tukaram Pawar, who is husband of petitioner no.1 and father of petitioner nos.2 and 3 had filed Criminal M.A. No.1 of 2021 before the Sessions Judge, At Ambajogai for directions under section 156 (3) of Cr.P.C. against respondent no.2 and others. Similarly, on 24.8.2020 a detailed representation is made to the Superintendent of Police at Beed as regards to the incident dated 25.3.2020 disclosing the assault on family members of the Petitioners by respondent no.2 and his companion. He would submit that the FIR registered against the petitioners and consequential criminal proceeding is abuse of process of law at the hands of

police officers, who are supporting the respondent no.2 in his misdeeds.

4. Per contra, Mr. N.R. Dayama, learned APP for respondent/state submit that the incident dated 25.3.2020 was immediately reported by respondent no.2. Consequently, the offence has been registered against the petitioners/accused persons on the same day. FIR and supplementary statement of respondent no.2 makes out the offences against all accused persons. Further, the statement of Santosh Jetewad, who accompanied with respondent no.2 at the time of incident clearly stipulates role of the accused persons in commission of offence. Therefore, he submits that the petition be rejected.

5. We have considered the submissions advanced on behalf of the learned advocates appearing for the respective parties. We have perused contents of the FIR and charge-sheet. Apparently, on the basis of information given by respondent no.2, crime no.63 of 2020 has been registered against the accused persons for the offences punishable under section 307, 353, 332, 336, 143, 147, 149, 323, 504, 506 and 188 of the Indian Penal Code, so also section 51-B of Disasters Management Act, 2005. The FIR names about nine accused persons. Specific overt act are alleged against accused Ashok Tukaram Pawar, Ram Tukaram Pawar and Vikas Arjun Mitkar. Further there is stipulation that other accused persons have also assaulted respondent no.2 by fist and kicks. Supplementary statement of informant dated 26.3.2020 again elaborates the incident wherein name of all petitioners have been mentioned. The 161 Cr.PC. statement of Santosh

Jetewad supports contents of the FIR and supplementary statement. The police persons had arrived at the spot and their statements are also recorded. Injury certificate issued by the Medical Officer PHC Shirsala indicates that respondent no.2 had suffered grievous injury on his back and ring finger. Similarly, Santosh Jetewad suffered grievous injuries as certified by the Medical Officer. Material in the charge-sheet is indicative of commission of the offences against police officers, who were discharging their official duties during Pandemic period.

6. Although, Mr. Phad, learned advocate appearing for the petitioners contend that accused persons were in fact victim of the incident and ladies are unnecessarily implicated, we find that defence of the petitioners/accused cannot be appreciated at this stage and matter needs to be relegated for the trial. When prima facie ingredients of the offences are made out in the FIR and complicity of the petitioners in commission of offence is discernible from material in the charge-sheet, it would not be proper to delve into defence of the accused persons while exercising inherent powers or writ jurisdiction. The remedy under section 482 of Cr.P.C. or 226 of the Constitution of India is expected to be sparingly used.

7. Hence, writ petition stands **dismissed**.

(S. G. CHAPALGAONKAR)
Judge

(SMT. VIBHA KANKANWADI)
Judge

aaa-

....