



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

CRIMINAL APPLICATION NO. 3154 OF 2023

- 1) Mushtak Ismail Shaikh,
Age : 46 years, Occ.: Agriculture,
R/o : Kuran, Taluka Sangamner,
District : Ahmednagar.
- 2) Anjum Mushtak Shaikh,
Age : 40 years, Occ : Household,
R/o : Kuran, Taluka Sangamner,
District : Ahmednagar.
- 3) Parveen Shakil Shaikh,
Age : 34 years, Occ: Household,
R/o : As above.
- 4) Naveed Abdul Raheman Shaikh,
Age : 38 years, Occ: Agriculture,
R/o : Kuran, Taluka Sangamner,
District : Ahmednagar.

...APPLICANTS

V E R S U S

- 1) The State of Maharashtra,
Through Police Station Officer,
Sangamner City Police Station,
Sangamner, District Ahmednagar.
- 2) Hafij Haidar Shaikh,
Age : 55 years, Occ : Agriculture,
R/o : Kuran, Taluka Sangamner,
District : Ahmednagar.

...RESPONDENTS

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Advocate for the Applicants : Mr. Shaikh Mazhar A. Jahagirdar
Additional Government PLeader for the Respondent No. 1/State :
Mr. S.A. Gaikwad
Advocate for Respondent No. 2 : Mr. Narayan B. Narwade
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**CORAM : SMT. VIBHA V. KANKANWADI &
ROHIT W. JOSHI, JJ**

DATE : 26.11.2024

JUDGMENT : [PER : ROHIT W. JOSHI, J.]

1. The present application is filed under Section 482 of the Code of Criminal Procedure, 1973, inter-alia praying for quashing of the First Information Report, bearing No. 561 of 2023 registered on 07.07.2023 with Sangamner City Police Station, Sangamner, District Ahmednagar, for the offence punishable under Sections 323, 324, 354, 504, 506 read with Section 34 of the Indian Penal Code. Subsequently, the application is amended in order to challenge the charge-sheet filed on 27.10.2023 bearing No. 187 of 2023 and Regular Criminal Case No. 511 of 2023, pending on the file of learned Judicial Magistrate, First Class, Sangamner, District Ahmednagar, which is registered pursuant to the filing of the First Information Report.

2. It appears from the record that respondent No. 2 had visited Sangamner City Police Station on 03.11.2022, narrating the incident about an assault by applicant Nos. 1 to 4 on the said date. On the basis of information received, the Police Station Officer issued Non Cognizable Report (NCR) dated 03.11.2022.

3. Respondent No. 2 thereafter filed an application under Section 156 (3) of the Code of Criminal Procedure, in the Court of learned Judicial Magistrate, First Class, (Court No. 2), Sangamner on 14/12/2022. In the said application it is stated that although a serious offence was committed by applicant Nos. 1 to 4, the Police Station Officer wrongly registered NCR. It is also alleged that all the facts narrated by respondent No. 2 were not written down by the Police Station Officer. The said application preferred by respondent No. 2, was allowed by the learned Magistrate vide order dated 13.04.2023. Pursuant to the said order, the aforesaid First Information Report has been registered.

4. The allegations in the First Information Report are that applicant No. 1 is the nephew of respondent No. 2, informant. They own a property, which comprises of a room with tin shed, ad-

measuring around 42.90 square meters. Respondent No. 2, the informant has stated that he had agreed to sell his portion in the said property to applicant No. 4, who is his nephew, however, since he was short of funds, it was decided that some time should be given to him for arranging funds in order to purchase the property. Respondent No. 2, informant, however, alleged that respondent No. 2 clandestinely sold the property to applicant No.1. It is further stated that applicant No. 1 had put his lock on the said property on 03.11.2022 and on noticing the said fact respondent No. 2 approached applicant No. 1 in order to make inquiry as to how he had put his lock on the said property. It is further alleged that on this, applicant Nos. 1 to 4 got agitated and started assaulting respondent No. 2 by inflicting fists blows and kicks. It is further stated that the wife of respondent No. 2, Shaikh Farida Hafij rushed to the spot in order to save her husband. However, applicant Nos. 2 to 4 assaulted her and tried to strangle her with 'Odhni' / 'Dupatta'. It is further alleged that applicant No. 1 had pulled her 'Odhni' and 'Kurta' in order to outrage her modesty. It is further alleged that the applicants also assaulted respondent No. 2 and his wife with wooden stick that was lying nearby.

5. It may also be stated here that there is an on going property dispute in relation to another property which is an agricultural land in between respondent No. 2 and applicant No. 4.

6. Mr. Shaikh Mazhar A. Jahagirdar, learned Advocate for the applicants submits that registration of the First Information Report against the applicants is completely untenable and impermissible, in as much as, the contents of the First Information Report taken on the face value, do not make out any cognizable offence. He submits that at the most the NCR report could have been issued as was issued earlier by the Police Station Officer. There are two offences which are cognizable in nature viz. sections 324 and 354 of the IPC. As regards Section 324 of the IPC the learned Counsel for the applicants submits that a stick cannot be said to be a weapon of offence, which is likely to cause death and therefore, Section 324 of the Indian Penal Code will not be attracted. As regards Section 354, he submits that since there was on going quarrel, it is probable that the dress of the wife of respondent No. 2 was pulled that by itself would not be sufficient to attract section 354 of IPC. He stated that the incident had occurred in broad day light. Applicant No. 2, who is wife of applicant No. 1

and another lady i.e. applicant No. 3 were present at the spot of incident as per the FIR and that the wife of respondent No. 2 had herself voluntarily come on the spot of incident after the quarrel had ensued between the applicants and respondent No. 2. He reiterated that the allegations regarding pulling of 'Dupatta' and 'Kurta' would not attract Section 354 of the Indian Penal Code, in the back drop of the facts narrated in the F.I.R. itself. He would therefore sum up his submission urging that there is no material to infer mens-rea as regards offence of outraging modesty and as such even if the allegations regarding the same are taken on their face value, no case is made out under Section 354 of the Indian Penal Code.

7. Learned Advocate for the applicants further submits that the allegations with respect to the outraging of modesty are clearly by way of afterthought, in as much as, same do not appear in the NCR dated 03.11.2022. He further submits that the allegation that the police did not record entire facts narrated while issuing NCR dated 03.11.2022 is made irresponsibly without assigning any reason for the same. The learned Advocate has drawn our attention to the property card of the said tin shed, which is part

of the charge-sheet to contend that respondent No. 2 had sold his half share in the said property to one Shaikh Abu Bakar Kalam, vide registered sale deed dated 11.03.2016 and accordingly the name of purchaser is mutated vide mutation entry No. 49, recorded on 31.03.2016. Referring to the said document the learned counsel contends that although the respondent no.2 has sold his share in the said tin shed he claims to be owner of half share in the same and started quarrel with the applicant no.1 only because he has purchased remaining half share from the applicant no.4. He contends that the foundation of the case is therefore, based on falsehood. Apart from this there is also a property dispute in relation to another property. In this backdrop he submits that this is a clear case of false implication and therefore the allegations in the FIR should not be considered as gospel and the Court should corroborate the same with material forming part of the charge-sheet.

8. As against this, Mr. Gaikwad, learned APP appearing for respondent No. 1 and the learned Advocate Mr. Narwade, appearing for respondent No. 2 submit that while dealing with the application under Section 482 of Code of Criminal Procedure, the allegations in

the F.I.R. have to be taken to be true and correct and further that the veracity thereof cannot be looked into, while deciding the application under Section 482 of the Code of Criminal Procedure. They further state that since the stick has been used for assaulting respondent No. 2 and his wife and the dress of the wife of respondent No. 2 was pulled, both Sections 324 and 354 of the Indian Penal Code are squarely attracted, as such offences are cognizable.

9. We have perused the F.I.R. alongwith charge-sheet and the documents included in the charge-sheet, so also the statements recorded during the course of investigation.

10. As stated above, Sections 324 and 354 of the Indian Penal Code are the offences which are cognizable in nature, therefore, unless the ingredients of these two offences are made out the registration of the F.I.R. will not be permissible.

11. We first deal with Section 324 of the Indian Penal Code. Respondent No. 2 has stated in the F.I.R. that he and his wife were assaulted with stick, however, the particulars of the said stick are

not mentioned in the F.I.R. It is however, also necessary to note that the Rural Hospital, Sangamner had issued a Medico Legal Case Certificate (MLC) dated 10.11.2022 with respect to the injuries suffered by respondent No. 2 and his wife. The injuries suffered by respondent No. 2 and his wife are stated to be simple injuries caused due to hard and blunt object. The injuries are in the nature of blunt trauma over face and contusion, swelling and tenderness. The Medical Officer of the Rural Hospital, Sangamner has also issued an undated communication to the Police Officer stating that the injuries referred in MLC reports of respondent No. 2 and his wife are not possible to be inflicted by means of stick which is stated to be seized from the applicant no.1 and was sent to the hospital for opinion. Thus, on the basis of allegations and evidence on record, we find that respondent No. 2 and his wife have suffered simple injuries which are inflicted by a stick, although not by the stick seized from the applicant no.1. In this context, it is now necessary to consider as to whether the stick answers description of weapon referred in Section 324 of the Indian Penal Code. Section 324 of the Indian Penal Code is attracted when a person voluntarily causes hurt by means of any instrument of shooting, stabbing or cutting or any instrument which, used as a weapon of offence, is

likely to cause death or by any heated substance or poisonous or explosive substance. As stated above the description of stick is not mentioned either in the F.I.R. or in the statements of witnesses. The injuries caused could not have been inflicted by the stick, which is allegedly seized from the applicants as per the report of Medical Officer. We find that there is no material on record to suggest that the stick used in the assault can answer the description of a weapon, which is likely to cause death. Although simple injuries are caused by means of weapon i.e. stick, it cannot be said that on the basis of material on record those injuries are caused by the weapon, which is likely to cause death. We, therefore, hold that the material on record is grossly insufficient to remotely suggest that the weapon used is a weapon capable of causing death and therefore, Section 324 of the Indian Penal Code will not be attracted. In this regard, reference can be made to the judgment of the Hon'ble Supreme Court in **Anwarul Haq vs The State Of Uttar Pradesh, reported in (2005) 10 SCC 581**, particularly, paragraph Nos. 12 and 13 thereof, which read as under :

"12. The expression "an instrument, which used as a weapon of offence, is likely to cause death" should be construed with reference to the nature of the instrument and not the manner of its use. What has

to be established by the prosecution is that the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in this Section.

13. The Section prescribes a severer punishment where an offender voluntarily causes hurt by dangerous weapon or other means stated in the Section. The expression "any instrument which used as a weapon of offence is likely to cause death" when read in the light of marginal note to Section 324 means dangerous weapon which if used by the offender is likely to cause death."

12. Section 354 of the Indian Penal Code provides that whoever, assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment, which shall not be less than one year but which may extend to five years. The essential ingredients of Section 354 of the Indian Penal Code are that the person who assault or uses criminal force to a woman, with intention to outrage her modesty or knowing that his act or assault or use criminal force is likely to outrage her modesty. The perusal of the provision will clearly demonstrate that the mens-rea is an

essential element of the offence. It is on this back drop that we need to consider un-disputed facts emerging on the record.

13. The applicants had put a lock to the property purchased by the applicant No. 1 from applicant No. 4. Respondent No. 2 rushed to the spot raising objection to this. Respondent No. 2 claims to be a co-owner of the property. A quarrel ensued between the applicants on the one hand and respondent No. 2 on the other. Seeing that respondent No. 2 was beaten up by the applicants, his wife rushed to the spot to intervene to save her husband. Respondent No. 2 alleges that applicant No. 1 pulled her 'Dupatta' and 'Kurta' during the ensuing fight. Apart from this there is no allegation, inappropriate physical contact with the wife of respondent No. 2. The incident has occurred in broad day light, when the wife of the Respondent No. 2 and another lady i.e. applicant No. 3 were present. It may also be stated that in the NCR recorded on 03.11.2022, there is no allegation against the applicant No. 1, regarding the alleged act of pulling clothes of wife of respondent No. 2 on the basis of which section 354 is applied. The record discloses that NCR was lodged immediately after the incident. The incident as stated to have occurred on 03.11.2022, at

about 12.30, in noon and the NCR is registered on the same day, at 1.38 p.m., i.e. within a period of one hour. The 156(3) application in which allegation regarding pulling clothes is made is dated 14/12/2022 which is after a period of around 40 days from the date of incident. It is true that respondent No. 2 has alleged that the police officer did not record the entire facts as narrated by him. The allegation is that the police authority did not record entire narration of facts while issuing NCR is vague allegation, not backed by any particulars. The respondent No. 2 is absolutely silent as regards the reasons as to why police authority would not record all the facts while issuing the NCR. We may also note that there is on going property dispute in relation to the agricultural land between respondent No. 2 and his nephew applicant No. 4 and on this backdrop, applicant No. 4 and his family members have sold their share in the property/tin shed, which respondent No. 2 claimed to be a co-owner. In such circumstances, the possibility of exaggeration and false implication cannot be ruled out.

14. It is also pertinent to mention here that respondent No. 2 has already sold his share in the said property, which is tin shed way back in the month of March, 2016 itself and yet he is claiming

a right/share over the said property. The property card is a part of the charge sheet. The said property card and entries recorded therein were not disputed by the learned counsel representing the respondent no.2. The property card records that 21.45 square meters area was sold by respondent No. 2, vide sale deed dated 11.03.2016 to one Shaikh Abu Bakar Kalam and that 21.45 square meters area of the said property was sold by applicant No. 4 and his family members to applicant No. 1, vide sale deed dated 02.02.2023. In such circumstances, the allegations leveled by respondent No. 2 are required to be carefully examined.

15. The Hon'ble Supreme Court has held in the matter of **Mahemood Daliya and Ors. Vs. The State of Uttar Pradesh and Ors**, reported in 2023 SCC Online SC 950 that in cases where the First Information Report/complaint is lodged with some ulterior motive for taking wreaking vengeance the Court is duty bound to examine the contents of the First Information Report/complaint meticulously with great care and caution, keeping in mind that the person who initiates criminal prosecution for wreaking personal vengeance would ensure that the complaint is well drafted with appropriate pleadings so as to make out some cognizable offence.

In such circumstances, the Court is duty bound to take into consideration the other attending circumstances emerging from record over and above the averments in the complaint/First Information Report. The Court must try to read between the lines while dealing with a case initiated out of the personal ill-will and vengeance. The above judgment has been followed in the matter of **Mamidi Anil Kumar Reddy Vs. The State of Andhra Pradesh and Another, reported in 2024 SCC online SC 127**, wherein, the Hon'ble Supreme Court has reiterated the legal principal laid down in the case of **Mahemood Ali** (supra) and has further emphasized that in such cases it is the duty of the High Courts to consider all the allegations with great care and circumspection so as to protect against danger of unjust prosecution.

16. We have considered the allegations in the First Information Report and material on record keeping in mind the aforesaid legal principles particularly noticing that there is family feud between respondent No. 2/ Informant and his nephew/applicant No. 4 and that the applicant No. 1 has purchased one of the properties in dispute from applicant no. 4.

17. Having regard to the totality of circumstances, we hold that the essential ingredients of Section 354 of the Indian Penal Code are not made out, on the basis of the F.I.R. and the material collected during the course of investigation which is forming part of the charge-sheet.

18. In view of the reasons recorded above, we find that the essential ingredients of Sections 324 and 354 of the Indian Penal Code are not made out. If said two offences are excluded the other offences punishable under Sections 323, 504 and 506 of the Indian Penal Code are non cognizable offences and therefore, the registration of the FIR is prohibited by law. We, therefore, pass the following order :

ORDER

(i) The Criminal Application stands allowed.

(ii) The First Information Report bearing Crime No.561/2023, dated 07.07.2023 registered against applicant 1) Mushtak Ismail Shaikh, 2) Anjum Mushtak Shaikh, 3) Parveen Shakil Shaikh, 4) Naveed Abdul Raheman Shaikh, with Sangamner City Police Station, Dist. Ahmednagar, for the offence punishable under sections 323, 324, 354, 504, 506 read with section 34 of the Indian Penal Code and

Regular Criminal Case No. 511 of 2023, pending on the file of the learned Judicial Magistrate, First Class, Sangamner, District Ahmednagar are hereby quashed.

(R.W.JOSHI)
JUDGE

(SMT. VIBHA V. KANKANWADI)
JUDGE

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