



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3570 OF 2022

Netaji S/o Vishwamber Gaikwad

.. Applicant

Versus

1] The State of Maharashtra
Through Police Station,
Naldurg, Tq. Tuljapur,
Dist. Osmanabad

2] Vikas S/o Rajendra Kalunke

.. Respondents

...
Advocate for applicant : Mr. Santosh N. Patne
APP for the respondent – State : Mr. V.K. Kotecha
Advocate for respondent no. 2 : Mr. D.S. Kale
...

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

DATE : 4 MARCH 2024

ORDER (MANGESH S. PATIL, J.) :

We have heard both the sides finally, with consent.

2. The applicant is seeking quashment of crime no. 137 of 2022 registered with Naldurg Police Station, Taluka – Tuljapur, District – Osmanabad for the offences punishable under section 323, 324, 504 of the Indian Penal Code and section 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, consequent chargesheet and Special (Atro) Case No. 113 of 2022 pending before the Special Judge and Sessions Judge, Osmanabad, initiated by the respondent no. 2.

3. The sum and substance of the allegations as can be discerned are to the effect that the respondent no. 2 belongs to Mang scheduled caste. On 05-05-2022 at about 05:30 hours, when he was proceeding on his motorcycle, the applicant signalled him to stop. When he approached the applicant, he caught hold the respondent no.2 with the collar. Uttering him insulting words on caste lines and abusing him in filthy language, the applicant started questioning him as to why he was obstructing possession of his brother. When the respondent no. 2 tried to object to the hurling of abuses, the applicant assaulted him with kicks, fist blows, stone and wooden log. Even the applicant's brother Amar arrived at the scene and tried to convince the applicant not to hurl abuses at the respondent no. 2 . Thereafter, the latter approached the police and lodged the FIR on the basis of which crime was registered. In due course of time, chargesheet has been filed.

4. Learned advocate for the applicant submits that it is a clear case of false implication. No incident as has been alleged in the FIR, has taken place. The respondent no. 2 is annoyed by the fact that the applicant and his wife have agreed to purchase a land from one Shardabai Babruwan Harale. The applicant is serving in Military and was posted at a remote place. He was not present at the site. He would try to substantiate these facts by taking us through the CDR and

his location which is also a part of the chargesheet. He would submit that it would be abuse of the process of court if the applicant is made to face the prosecution.

5. The learned APP and the learned advocate for the respondent no. 2 would oppose the application. They would submit that indeed there is some civil dispute between the applicant and one Harale about which the latter has filed a Regular Civil Suit. The applicant's wife who is defendant therein, has been enjoined from obstructing possession of Shardabai Harale. This was a triggering factor and could constitute motive on the part of the applicant to assault the respondent no. 2.

6. We have considered the rival submissions and perused the papers.

7. As far as the plea of alibi is concerned, needless to state that it will have to be substantiated by leading cogent evidence during the trial.

8. As far as the actual incident is concerned, the FIR has been lodged promptly. There is an injury certificate of the respondent no.2 of the same date wherein he is stated to have received blunt trauma to the chest. Though the injury is stated to be simple, this would substantiate the allegations of the assault.

9. The FIR expressly mentions about the abuses hurled by the applicant against the respondent no.2 on caste lines and even filthy language used by the applicant. Kishor Narayan Ghodke, an independent witness to the incident, has also come forward who has stated to have witnessed the incident occurred between the two i.e. the applicant and the respondent no. 2.

10. In view of such state-of-affairs, in our considered view, this is not a fit case where crime can be quashed by using the extraordinary jurisdiction of this Court.

11. The application is rejected.

12. We quantify the fees of Mr. D.S.Kale, learned advocate whom we have appointed to represent the respondent no. 2, at Rs.3000/-.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/