



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL APPLICATION NO. 3624 OF 2023

1. Nadeem Ajij Pathan,
Age; 21 years, Occ; Education,
2. Raju Ajij Pathan,
Age; 26 years, Occ; Pharmacist,

Both residence of Plot NO. 24,
Navnath Nagar, Garkheda Parisar,
Satara, Aurangabad,
Tq. & District: Aurangabad.

...Applicants

VERSUS

1. The State of Maharashtra
Through its Police Inspector
Cantonment Chawani Police
Station, Aurangabad.
Tq. & District Aurangabad.
2. Ravindra Subhash Deshmukh,
Age; 35 years, Occ; Service,
Police Constable B. No. 2827
Police Station Chhawani,
Aurangabad.

...Respondents.

...
Advocate for Applicants : Mr. Patil Vinod Prakash
APP for Respondent No. 1/State : Mr. G.A. Kulkarni
...

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

DATE : 04.12.2024.

PER COURT :

1. The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973, for quashing of the proceedings of SCC No. 4512 of 2023, pending before the 16th Judicial Magistrate First Class, Aurangabad, arising out of First Information Report (for short FIR) vide Crime No. 112 of 2023 dated 20.03.2023, registered with Cantonment, Chavani Police Station, Aurangabad for the offence punishable under Section 160 of the Indian Penal Code.

2. Heard the learned Advocate for the applicants and the learned APP for the Respondent/State.

3. In order to cut short, we say that both the sides have argued in support of their respective contentions. We have considered the contents of the FIR, as well as documents filed in the charge-sheet.

4. The FIR has been lodged by the Police Constable, Ravindra Subhash Deshmukh in his official capacity. He has

stated that he was on duty as a driver with a vehicle provided to Chavani Police Station and he was on duty from 9.00 a.m. to 21.00 hours on 20.03.2023. Around 12.30 hours he alongwith other police officers were patrolling in Padegaon area, near Nashik Road. They received information that infront of one pourch of Apartment, certain persons were fighting with each other and disturbing the public peace. He along with police staff, went to the place and tried to pacify those persons, still, those persons have paid no heed to the advise given by the informant and other police officers and kept on fighting and thereafter, causing disturbance to the public peace. Those persons who were four in numbers were taken in custody and were brought to the police station and thereafter he lodged report. The present applicants are amongst those four persons.

5. The contents of the charge-sheet would show that there are statements of only two persons under Section 161 of the Code of Criminal Procedure, one is Raju Jadhav, who is serving as Police Constable and another is Baban Govind Jadhav, who is also a Police Constable attached to the same Police Station and they stated to be on duty of patrolling at the relevant time. The first and the foremost fact that required to be

noted here is that if the public was present at the said place, the statements of some persons from the public ought to have been recorded.

6. The prosecution case shows that the offence that has been committed by the applicants is punishable under Section 160 of the Indian Penal Code, which provides for punishment for committing affray. Affray has been defined under Section 159 of the Indian Penal Code. The essential ingredients for proving the offence under Section 159 of the Indian Penal Code are 1) the fighting of two or more persons. 2) the fighting must take place in public place and 3) such fighting must also result in disturbance of the public peace. Therefore, in the present case it is required to see as to whether these ingredients are fulfilled. The contents of the FIR, as well as the statements under Section 161 of the Code of Criminal Procedure, would show that there were two or more persons stated to be fighting with each other on public place, however, there is no evidence to show that they were disturbing the public peace. We may rely upon **Mahant Kaushalya Das Vs. The State of Madras reported in A.I.R. 1966 SC 22**, wherein, it is held that, mere causing public inconvenience is not sufficient. Here there are no

statements of persons from the public to see even prima-facie, as to whether the public peace was disturbed. Furthermore, the use of the word fighting will not be sufficient as in the present case the word used is "Maramari". The said fighting should be as a result of use of force and further it can be considered that neither in the F.I.R., nor in the statements under Section 161 of the Code of Criminal Procedure or even by the Investigating Officer it was tried to extract as to what was the point/reason, on which those persons were fighting. It also appears that though four persons were taken in custody, they were not taken for medical examination in order to see as to whether the said fighting has caused any kind of hurt to any one of them or all of them.

7. On the same day, after they were taken at Police Station, it appears that they were allowed to go home, after they were asked to remain present before the Court. The contents of the FIR, as well as statements of witnesses, are not clear enough to state that since when or for how much time the fighting was going on. If that was for more period, then it would have certainly caused hurt to any one or all or more than one amongst them. Therefore, the contents of the FIR, as well as

the material in the charge-sheet are not sufficient to attract the ingredients of Section 159 of the Indian Penal Code and therefore, it cannot be said that there is sufficient evidence to arrive at a conclusion that the applicants have committed offence punishable under Section 160 of the Indian Penal Code. Therefore, it would be unjust to direct the applicants to face the trial. A case is made out to exercise the powers under Section 482 of the Code of Criminal Procedure, in view of the principles laid down in **State of Harayana and Others vs. Bhajan Lal and another reported in AIR 1993 SC 1348**. Therefore, we allow the application. The proceedings in SCC No. 4512 of 2023, pending before the learned 16th Judicial Magistrate, First Class, Aurangabad, arising out of the F.I.R. vide Crime No. 112 of 2023, dated 20.03.2023, registered with Cantonment, Chavani Police Station, Aurangabad for the offence punishable under Section 160 of the Indian Penal Code, stands quashed and set aside.

(ROHIT W. JOSHI)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE