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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2667 OF 2022**

- | | | | |
|-----|--------------------------|-----|-------------|
| 1. | Shivaji K. Khandve | | |
| 2. | Sunita S. Khandve | | |
| 3. | Sagar S. Khandve | | |
| 4. | Bharat S. Khandve | | |
| 5. | Dnyaneshwar R. Khandve | | |
| 6. | Pandurang R. Khandve | | |
| 7. | Sunny P. Khandve | | |
| 8. | Ramchandra D. Khandve | | |
| 9. | Laxmibai R. Khandve | | |
| 10. | Sheetal D. Khandve | | |
| 11. | Janabai P. Khandve | ... | Petitioners |
| | Versus | | |
| 1. | The State of Maharashtra | | |
| 2. | Dattatray B. Khandve | ... | Respondents |

Mr. Adwait Bhonde for the Petitioners.
Ms Rutuja Ambekar, APP for the Respondent/State.
Mr. Sujay Gangal for the Respondent No.2.

**WITH
WRIT PETITION NO.418 OF 2023**

- | | | | |
|----|----------------------|-----|---------------|
| | Dattatray B. Khandve | | ...Petitioner |
| | Versus | | |
| 1. | State of Maharashtra | | |
| 2. | Shivaji K. Khandve | | |
| 3. | Sagar S. Khandve | | |
| 4. | Bharat S. Khandve | | |
| 5. | Sunita S. Khandve | ... | Respondents |

Mr. Sujay Gangal for the Petitioner.
Ms Rutuja Ambekar, APP for the Respondent/State.
Mr. Adwait Bhonde for the Respondents No.2 .

**CORAM : SMT ANUJA PRABHUDESSAI &
N. R. BORKAR, JJ.
DATED : 17 JANUARY 2024.**

PC:-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the respective parties.
2. The petitioners in Writ Petition No. 2667 of 2022 seek to quash the first information report vide C.R. No. 210 of 2022 registered with Vimantal (Airport) Police Station, Pune city, pursuant to the order dated 6 May 2022 under Section 156(3) of the Code of Criminal Procedure (Cr.P.C.) passed by the learned 13th Judicial Magistrate First Class, Pune in R.C.C. No. 2205/2020 filed by respondent No.2.
3. Whereas the petitioner in Writ Petition No. 418 of 2023, who is respondent No.2 in Writ Petition No. 2667 of 2022, has challenged the order dated 27 September 2022 in Criminal Revision Application No. 187 of 2022 whereby the learned Sessions Court, Pune has quashed and set aside the order dated 6 May 2022 under Section 156(3) of Cr.P.C. in R.C.C. No. 2205/2020.
4. The petitioners in Writ Petition No. 2667 of 2022 hereinafter shall be referred to as the petitioners and the petitioner in Writ Petition No. 418 of 2023 hereinafter shall be referred to as the respondent No.2.
5. The brief facts necessary to decide these petitions are as under:

The respondent No.2 filed a complaint before the learned

J.M.F.C., Pune alleging that upon the death of his grandfather, the properties owned by him were partitioned and land under Survey No. 93/1, 101/1/1 and 102/4 was allotted to his father. Respondent No.2 claims that his father had sold some part of the properties and be continued to be in possession of 34 Are in Survey No.101/1/1 and 18 Are in Survey No.102/4. He alleged that some persons have encroached in the properties and the civil suits filed against the encroachers are pending before the Civil Court, Pune.

6. Respondent No.2 had claimed that several incidents of assault were reported to the police and N.C. complaints were registered at Lohagoan Police Chowky. The respondent No.2 alleged that on 4 August 2018, he was assaulted by petitioner No.1 and that similar incidents took place on 19 November 2019 and 21 November 2019. It is stated that since 2019, the petitioner Nos.1 & 8 have been compelling him to transfer some land in their favour, failing which they have threatened that he and his family would not be allowed to live in Lohagaon nor use their land. The respondent No.2 stated that on 7 December 2019, petitioner Nos.1 to 11 trespassed into his house and assaulted him and his family members, resulting in nasal fracture, fractured ribs and injuries on his eye and lips. The petitioners are also alleged to have pelted stones and damaged the window panes and wiper of the Car.

7. The police reached the spot on receiving a call on No.100 and recorded the complaint and cross-complaint lodged by the

respondent No.2 and the petitioners. The police registered N.C. complaint in respect of the offence dated 7 January 2019 reported by respondent No.2. The respondent No.2 complained to the Commissioner of Police, Pune that N.C. complaint was registered despite having suffered a nasal fracture. The investigating agency having failed to register the crime against the petitioners, respondent No.2 filed a complaint bearing C.C.No.2205 of 2022 before the learned J.M.F.C. Pune.

8. By order dated 6 May 2022, learned 13th J.M.F.C., Pune observed that there is *prima facie* material to show the involvement of the petitioners and others in committing cognizable offences and considering the facts of the case and the nature of offence, directed the Police Officer in-charge of Vimantal (Airport) Police Station, Pune city to register the FIR under Section 156(3) of Cr.P.C.. Pursuant to said order, the statement of respondent No.2 was recorded and Crime No.210 of 2022 came to be registered at Vimantal Police Station (Airport), Pune for offences under Sections 450, 452, 427, 325, 326, 347, 354, 364-A, 386, 143, 109, 504, 506, 509, 511 and 120-B of the IPC.

9. The petitioner Nos.1 to 4 filed revision application before the Sessions Court challenging the order dated 6 May 2022 in R.C.C. No.2205/2022. By order dated 27 September 2022, learned Sessions Judge allowed the revision application and quashed and set aside the order dated 6 May 2022 ordering investigation under Section 156(3) of Cr.P.C.. Being aggrieved

by the order dated 27 September 2022, respondent No.2 has filed Writ Petition No. 418 of 2023 whereas the petitioners have filed Writ Petition No.2667 of 2022 to quash FIR registered with Vimantal (Airport) Police Station pursuant to the order dated 6 May 2022.

10. We have heard the learned counsel for respective parties and perused the records.

11. The records reveals that the mother of respondent No.2 has also filed a complaint bearing R.C.C. No.1123 of 2020 before learned J.M.F.C., Court Room No.5, Pune in respect of the same incident. Learned counsel for respondent No.2, under instructions, states that the said complaint will be withdrawn within two weeks from the date of uploading the order. The statement is accepted.

12. Now coming to the merits of the matter, the FIR refers to eight separate incidents from 4 June 2013 to 27 February 2021. The incidents dated 4 June 2013, 4 January 2021 and 27 February 2021 are referred to in the FIR, though there is no reference to these incidents in the complaint filed before the Magistrate. Moreover, the incident dated 4 June 2013 referred to in the FIR and the incident dated 2 July 2013 referred to in the complaint are stale. It is also pertinent to note that the incidents of 4 June 2023, 4 August 2018, 19 November 2019 and 21 November 2019 relate to non-cognizable offences.

13. The facts narrated in the complaint dated 7 December 2019, *prima facie*, reveal that the petitioners herein had trespassed in the house of respondent No.2 and assaulted him and his family members. One of the petitioners had allegedly caused an injury to respondent No.2 by tooth bite. Furthermore respondent No.2 was referred to hospital and the Medical Certificate *prima facie* shows that he had suffered nasal bone fracture. The complaint dated 7 December 2019, and other material on record *prima facie* disclose commission of cognizable offence, despite which the investigating agency failed to register the crime. Since no action was taken, despite complaint to the Commissioner of Police, Pune, the respondent No.2 filed the complaint bearing R.C.C. No. 2205 of 2020 before the J.M.F.C., Pune.

14. It is true that respondent No.2 had not filed his affidavit in support of the complaint. Nevertheless, we have gone through the records and are satisfied that the same *prima facie* disclose commission of offence under Section 325 of the IPC. Hence, we are not inclined to quash the FIR relating to the incident dated 7 December 2019 solely on the ground that the complaint under Section 156(3) of the Cr.P.C. was not accompanied by an affidavit.

Hence the following order:

ORDER

A] The Writ Petition is partly allowed. The FIR in respect of the incidents from 4 June 2013 to February 2021, save

and except the incident of 7 December 2019 is hereby quashed.

B] The investigating agency to investigate the crime in respect of incident dated 7 December 2019 and to take further steps in accordance with law. Leave granted to respondent No.2 to give a separate report in respect of the incident dated 27 February 2021, if he so desires. In the event of such information or report, the police officer shall take further action in accordance with the law.

C] Both the Petitions are disposed of in above terms.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)