



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (APL) NO.837 OF 2023

- 1) Jayesh S/o Haribhai Chandarana Aged about 50 years, Occ. Business, R/o. Behind Post Office, Hinganghat, Tah. Hinganghat, District Wardha.

.... Applicant(s)

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- 1) State of Maharashtra, through Police Station Officer, Police Station, Hinganghat, District Wardha.
- 2) Satish S/o Sadashiv Masal, Aged 43 years, Occ. Service as a Tahsildar, Hinganghat, Tah. Hinganghat, District Wardha.

.... Non-applicant(s)

Mr. R.K. Thakkar, Advocate for the applicant/s
Mr. Nikhil Joshi, AGP for the Respondent/State

**CORAM : SMT. VIBHA KANKANWADI
& MRS. VRUSHALI V. JOSHI, JJ.**
DATE : 26.06.2024

ORAL JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J)

1. Heard Mr. R.K. Thakkar, Advocate for the applicant and the learned APP for the State. Though the non-applicant is served, none appears for the non-applicant No.2.

2. **Rule.** Rule is made returnable forthwith. Heard finally by the consent of the learned Advocates for the parties.
3. The present application has been filed under Section 482 of the CrPC for quashing the FIR vide C.R. No.420 of 2023 dated 25.04.2023, registered with Hinganghat Police Station, District Wardha under Section 353, 324, 504 and 506 and read with Section 34 of the IPC and by way of amendment, the applicant is also praying for quashing the charge-sheet, bearing No.190 of 2023 dated 23.10.2023 pending before the learned Judicial Magistrate First Class, Hinganghat, Dist. Wardha.
4. A perusal of the charge-sheet would show that the respondent No.2 who was then Tahsildar at Hinganghat had lodged report in respect of the incident alleged to have taken place around 2.45 to 3.00 p.m. on 25.04.2023 for the offences punishable under Section 353, 324, 504 and 506 and read with Section 34 of the IPC, was directed to be registered by the Police Inspector, Police Station Hinghanghat, Dist. Wardha.

5. A perusal of the charge-sheet would show that the statement of one Jaiprakash Sarda has also been recorded when it is alleged that he was admitted in the hospital. As regards his injuries are concerned, in the FIR it is stated that co-accused Hemant Pogale had assaulted the said Jaiprakash Sarda on his head with the help of stone. The FIR does not disclose the presence of the present applicant but on the same date, when the statement of the said Jaiprakash Sarda had been recorded in the hospital, which has been taken down in the form of dying declaration (however, he is alive now) discloses the presence of the applicant but then says that he was instrumental to the incident or in other words it can be said that the said witness tried to say that the present applicant had instigated the said Hemant Pogale. The charge sheet is silent on the point in what manner the instigation was given. As aforesaid, the FIR does not even show the presence of the applicant, then the question arises how the instigation was given. Even the said statement of witness Jaiprakash Sarda, which is now required to be considered under Section 161 of the CrPC, does not give details of act of instigation.

6. Another fact to be noted is that the charge-sheet contains supplementary statement of the informant dated 27.04.2023 and in the same, he has categorically mentioned that as there was no personal altercation with the informant by the applicant, he had not mentioned the name of the applicant in the FIR. In the said supplementary statement also the informant has not stated the alleged act of instigation.

7. There is also statement of one Vijay Arjun Pawar, taken on 30.04.2024, who was Naib Tahsildar and was alleged to be present at the place of incident. That statement is also silent about the presence of the applicant. Similar are the statements of Shashikant Bokde employed with the Nagar Parishad, Hinganghat and Gajanan Thakre, Talathi of Hinganghat. If the applicant was not present, there cannot be the offences under Section 353, 324, 504 and 506 of the IPC. Further there is no evidence as regards the common intention so as to invoke Section 34 of the IPC.

8. It would be futile exercise to ask the applicant to face the trial and therefore, in view of the decision of the Hon'ble Supreme

Court in the case of State of *Haryana V. Bhajan Lal* (AIR 1992 SC 604), this is a fit case where the inherent powers of this Court under Section 482 of the CrPC deserve to be exercised. We therefore, proceed to pass the following order:

- (i) The applicant is **allowed**.
- (ii) The FIR vide C.R. No.420 of 2023 dated 25.04.2023 registered with Police Station Hinganghat, District : Wardha and the charge-sheet bearing No.190 of 2023 arising out of the said FIR pending before the learned Judicial Magistrate First Class, Hinganghat, District Wardha, stand quashed and set aside against the present applicant only.

Rule accordingly. No costs.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]