



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

CRIMINAL APPLICATION (APL) NO.1591 OF 2023

- 1) Abdul Naved Abdul Wahab,
Aged about years, Occ: Education
- 2) Abdul Rafique Abdul Raheman
Aged about 47 years, Occ: Business
- 3) Abdul Wahab Abdul Raheman
Aged about 59 years, Occ: Labour
- 4) Mohammed Mustak Abdul Wahab,
Aged about 40 yrs, Occ: Labour;
All R/o Deulghat, Tq. &Dist:
Buldhana.

.... Applicant(s)

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- 1) State of Maharashtra,
Through Police Station Officer,
Buldhana City, Dist. Buldhana.
- 2) Satishchandra Dinkar Rothe,
Aged about years, Occu: Lawyer
R/o Vidharbha Housing Society Azad
Hind Nagar, Buldhana, Tq. &Dist:
Buldhana.

.... Non-applicant(s)

Ms G.S. Jain, Advocate for the Applicants

Mr. H.D. Futane, AGP for the Non-applicant No.1/State

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

DATE : 22.07.2024.

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

1. The present application has been filed for invoking the inherent powers of this Court under Section 482 of the CrPC for quashing and setting aside the FIR and the charge-sheets.
2. All the four applicants are now arrayed as accused in charge-sheet bearing No.75 of 2019 dated 03.05.2019 and the subsequent charge-sheet dated 10.10.2023 arising out of the FIR vide C.R. No.14 of 2019 dated 07.01.2019 registered with Police Station, Buldhana City, filed before the learned Judicial Magistrate First Class, Buldhana for the offence punishable under Section 307, 341 read with Section 34 of the IPC and Section 3 punishable under Section 5 of the Indian Arms Act. The said case came to be registered in view of the FIR vide C.R. No.14 of 2019 dated 7.01.2019 registered at the behest of the present non-applicant No.2.
3. We have heard the learned Advocate for the applicants and the learned APP for the State. None appeared for the non-applicant No.2, though served.

4. The learned Advocate for the applicants has taken us through the FIR and the other documents in the charge-sheet. She submits that if we peruse the FIR lodged by the respondent No.2, it shows the presence of only one accused i.e. accused No.4 Mohammed Mustak. It is stated that three persons had come, out of which he has identified one. The other two were unknown for him. Then he says that it was asked to him that one Javed, who is client of the non-applicant No.2 should get bail as he was in jail at that time; otherwise the non-applicant No.2 would be taken to task. The applicant No.4 took up revolver and put it near ear of the non-applicant No.2. Before he could apply the trigger, his hand was pushed by the non-applicant No.2. The other two persons caught hold of the informant, but till then the applicant No.4 had fled away from the spot. It is contention of the learned Advocate for the applicants that the FIR does not show that there was round of fire and the said gun was used. It cannot attract the ingredients of Section 307 of the IPC. She further submits that even the statements of the witnesses will not prove that there is an

involvement of the other accused persons and therefore, the FIR and the Charge sheet need to be quashed and set aside.

5. Per contra, the learned APP strongly, opposed the application and relies on the reply filed by the API-Jaysing P. Rajpoot attached to Buldhana City Police Station.

6. Since the charge sheet is filed, we are required to consider the material to see whether *prima facie* case is made out against the applicants. The first and the foremost fact to be noted from the contents of the FIR, supplementary statement of the informant and the statements of the witnesses that the presence of the applicant Nos.3 and 4 is stated by the witnesses though not by the informant for the applicant No.3. The informant states that the applicant No.4 had come and gave him threat at the gun point. Now as regards the ingredients of Section 307 of the IPC is concerned, it is absolutely not necessary that the injury should occur to anybody. If gun is raised and pointed out to a person, it shows intention to cause injuries. Further in this case, the gun was pointed out towards head near ear, as stated in the FIR, this *prima facie* is sufficient to

attract the ingredients of attempt to commit murder. Now it is stated that the revolver has not been seized. It would be the appreciation of evidence that if the weapon with which threat was given is not seized then, whether it amounts to offence under Section 307 of the IPC or not. It cannot be so considered at this stage and it cannot be a ground for quashment of the FIR and the charge sheet. It was also stated on behalf of the applicants that the informant has lodged false cases against the applicants, taking advantage of the fact that he is in the legal profession. This fact is required to be proved by the applicants before the trial Court and that cannot be considered here in this case. We have also considered the statements of the witnesses as aforesaid, especially the witness Bhagwat Vyawhare who was with the informant and saw the applicant No.4 pointing out gun to the informant. We are of the opinion that *prima facie* the case is made out against the applicant Nos.3 and 4 and therefore, the present application stands rejected against them.

7. As regards the applicant Nos.1 and 2 are concerned, none of the witnesses was knowing them. They have been stated as

unidentified persons. The Investigating Officer has not conducted the identification parade. None of the witnesses and even the informant had not given description of those unidentified persons. In the said circumstance, it would be futile exercise to ask the applicant Nos.1 and 2 to face the trial. Hence, the case is made out for exercising the powers of this Court under Section 482 of the CrPC in their favour.

8. For the aforesaid reasons, the application stands **allowed partly**. It stands rejected as against the applicant Nos.3 and 4 and the application stands allowed against the applicant Nos.1 and 2.

9. The charge-sheet bearing No.75 of 2019 dated 03.05.2019 and the subsequent charge-sheet dated 10.10.2023 arising out of the FIR vide C.R. No.14 of 2019 dated 07.01.2019 registered with Police Station, Buldhana City and then filed before the learned Judicial Magistrate First Class, Buldhana and the committal proceeding, if any, filed before the learned Sessions Judge, Buldhana for the offences punishable under Section 307, 341 and

read with Section 34 of the IPC and Section 3 punishable under Section 5 of the Indian Arms Act, stand quashed and set aside.

Rule accordingly. No costs.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]