



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 615 OF 2024

APPLICANTS :
(Accused)

1. Idrish S/o Manjur Khan, Aged about 36 years, Occupation: private job, R/o Near English Ground, W.S.L. Colony, Sillewada, Pota, Tahsil Saoner, Dist. Nagpur.
2. Imran S/o Manjur Khan, Aged about 30 years, Occupation: private job, R/o Near English Ground, W.S.L. Colony, Sillewada, Pota, Tahsil Saoner, Dist. Nagpur.

-Versus-

NON-APPLICANTS :

1. The State of Maharashtra, through Police Station Officer, Police Station, Khaparkheda, Tq. Saoner, Dist. Nagpur.
2. Ramati W/o Narayan Singh, Aged about 70 years, Occupation : Nill, R/o. Wad No.5, Near Radhakrushna Temple, Dahegaon, Tq. Saoner, Dist. Nagpur.

Mr.S. I. Gatte, Advocate for the applicants.
Mr. S.S.Doifode, APP for non-applicant No.1.
None for non-applicant No.2.

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

DATE : 18TH JUNE, 2024

J U D G M E N T (Per : Smt. Vibha Kankanwadi, J.)

Heard learned Advocate Mr.Gatte for the applicants and learned APP Mr.Doifode for the non-applicant No.1-Police Station. Though served, none appears for non-applicant No.2.

2. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned Advocates for the parties.

3. The applicants invoke inherent powers of this Court under section 482 of the Code of Criminal Procedure for quashing and setting aside First Information Report (FIR) dated 07/03/2024, registered with non-applicant No.1-Police Station Khaperkheda, District Nagpur for the offence punishable under sections 341 and 427 read with section 34 of the Indian Penal Code (IPC).

4. Perusal of FIR lodged by present non-applicant No.2 would show that the incident alleged to have been taken place on 07/03/2024 at around 7.00 am, wherein it is stated that some persons had dug zilla parishad road. The informant says that they are resident of Ward No.5 and they have only road for Nutan Nagar. It is then stated that the applicants had tried to close the said road by erecting cement pole and bricks. Another statement is that since last one year

the dispute is pending in respect of the said road, though since 2006, the said road is known as zilla parishad road.

5. Affidavit-in-reply has also been filed on behalf of the Investigating Officer, wherein he had asked the gram panchayat to supply the relevant documents in respect of the public approach road.

6. The FIR is under sections 341 and 427 of the IPC. If we consider the ingredients of section 341, then it would be necessary to prove that there was wrongful restraint as defined under section 339 of the IPC. For proving the said offence, there should be voluntary obstruction of a person to prevent that person from proceeding in any direction in which that person has a right to proceed. Here the documents produced by the applicants would show that the applicant No.1 has approached Civil Judge, Junior Division, Saoner by filing Regular Civil Suit No.49 of 2023 against the gram panchayat and temporary injunction has been granted in favour of applicant No.1, wherein *prima facie* it is stated that right has been shown by the applicant/plaintiff. It appears that applicant No.1 had purchased the disputed property by a registered sale deed on 15/09/2022. The defendant gram panchayat had started the work of construction of road and nullah, which had given rise for cause of action for applicant

No.1 to file the suit in which the said temporary injunction has been granted by order dated 29/08/2023, that means, it was prior to the filing of the FIR. We, therefore, cannot say that there was any right in favour of the informant to proceed in a particular direction from the said property. *Prima facie*, the basic ingredients of section 339 of the IPC are not attracted. So also there cannot be a mischief of his own property by the owner and therefore, on that count also the ingredients of section 427 of the IPC are not attracted.

7. The gram panchayat has also given a certificate/letter, which appears to be given in the name of informant on 11/03/2024 regarding the said suit and prohibitory order that has been passed. This is additional evidence in favour of the applicants to show that *prima facie* offences have not been attracted.

8. In view of the above analysis, we found this to be a fit case where the FIR needs to be quashed and set aside. Hence, the following order.

ORDER

- (i) The application stands allowed and disposed of.
- (ii) The FIR dated 07/03/2024, registered with non-applicant

No.1-Khaperkheda Police Station, District Nagpur for the offence punishable under sections 341 and 427 read with section 34 of the Indian Penal Code against applicant No.1-Idrish Manjur Khan and applicant No.2-Imran Manjur Khan stands quashed and set aside.

(iii) Pending Criminal Application No.633 of 2024 stands disposed of.

(MRS.VRUSHALI V. JOSHI, J)

(SMT.VIBHA KANKANWADI, J)