



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO.1 OF 2020

1. Nagesh s/o Baliram Lagad,
Age; 18 years, Occu: Education,
R/o Karmavir Boys Hostel, in front of
S.T. Office, Renapur Naka, Latur,
Tq. & Dist. Latur.
2. Komal Baliram Lagad,
Age: 16 years, Occu: Education,
Minor U/g of her father
Bairam s/o Narayan Lagad,
Age: 48 years, Occu: Agril.,
R/o Talegaon (Bk), Tq. Dharur,
Dist. Beed

...Applicants

-VERSUS-

1. The State of Maharashtra
Through Police Station,
Dindrud, Dist. Beed
2. Rajkanya Mahadeo Lagad
Age : 45 years, Occu: Household,
R/o Telgaon (BK), Tq. Dharur,
Dist. Beed.

...RESPONDENTS

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Advocate for the Applicants : Mr. S. J. Salunke
A.P.P. for Respondent/State : Mr. G.A. Kulkarni
Advocate for Respondent No.2 : Mr. V. S. Sakhare h/f. Mr. S. A.
Ambad

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

DATED : 9th JANUARY, 2025

JUDGMENT (PER ROHIT W. JOSHI, J.) :

1. The applicants in the present proceeding are arrayed as accused Nos.3 and 4 in FIR No.89/2019 registered with Dindrud Police Station, District Beed on 10.05.2019 for the offence punishable under Sections 328, 323, 504 and 506 read with Section 34 of IPC.

2. Respondent No.2 is the informant. Accused Nos.1 and 2 are father and mother respectively of the present applicants. However, the FIR is challenged by accused Nos.3 and 4 only. The father of present applicants, i.e., Baliram Lagad and husband of respondent No.2 are real brothers. As per the contents of the FIR on 30.04.2019 at about 9 p.m. respondent No.2 had been to the house of accused No.1-Baliram Lagad to discuss a matter in relation to a plot which is stated to have been acquired by the said Baliram Lagad and Mahadeo Lagad, i.e., husband of respondent No.2, jointly. Respondent No.2 alleges that since Baliram Lagad had got his name alone recorded against the said plot without her consent she had gone to his house to make inquiries in that regard. Respondent No.2 states that at that time, the present applicants and their mother, Meerabai Lagad came outside the house and started quarrel with her. She alleges that the present applicants and their

mother started beating her by inflicting fist blows and kicks. She then alleges that Meerabai Lagad went inside the house and brought some bottle and the liquid in the said bottle was forcibly administered to her by Meerabai. She alleges that applicant No.1 was saying that respondent No.2 is all alone and they should kill her there and then. She had further stated that after she falls unconscious, one Ankush Dhumal, Baburao Dhumal and the accused No.1-Baliram took her to a private hospital from where she was shifted to Government Hospital, Ambajogai. She claims that she was taking treatment at Ambajogai from 01.05.2019 to 07.05.2019 and thereafter she has lodged the FIR on 09.05.2019 which came to be registered on the subsequent day, i.e., 10.05.2019. The present applicants have challenged the FIR in the present proceedings. It will be pertinent to mention here that at the relevant time both the applicants were minors.

3. Mr. S. J. Salunke, the learned Counsel appearing for the applicants has argued that even if the contents of the FIR are accepted to be true and correct on their face value it can be seen that offence under Section 328 cannot be attributed to the present applicants. In as much as admittedly they did not administer any substance to respondent No.2 in order to attract Section 328. With respect to other consequences, he submits that they are non cognizable and therefore

the FIR cannot be registered. He has pointed out that according to the FIR, Baliram, i.e, the father of the applicants who is arrayed as accused No.1 had taken respondent No.2 to hospital for treatment. This, according him, falsifies the allegations levelled in the FIR. He also points out to a document filed with the petition as Exhibit-E to contend that property was mutated in his name as well as in the name of respondent No.2. He states that other property in the village which was ancestral property was mutated in names of five legal representatives. By drawing attention to the documents he submits that the entire foundation to the case, i.e., dispute in relation to the property is based on falsehood. He further submits that leading the FIR as it is an offence under Section 328 can at best be attributed only to accused No.2 and not to the present applicants who are accused Nos.3 and 4. He further submits that the Regional Forensic Science Laboratory ("RFSL") Report dated 07.08.2019 reveals that there was no insecticide sample collected from respondent No.2. As regards the report relating to bottle which confirms existence of pesticides he submits that the incident had allegedly occurred on 30.04.2019, the bottle was obviously seized after FIR was lodged. The FIR was lodged on 10.05.2019 and as such it is unconceivable that the bottle which was forwarded to RFSL was the one which was used while the alleged offence was committed on 30.04.2019.

4. He lastly submits that even if the contents of the FIR are accepted to be true including the allegation that the said pesticide was administered to respondent No.2, offence under Section 328 will not be made out against the applicants, since, admittedly they did not administer the pesticide. He states that the other offences are non cognizable and therefore the FIR should be quashed.

5. Mr. G. A. Kulkarni, the learned A.P.P. appearing for the State submits that the common intention of all the accused can be inferred, since, as per the FIR, accused Nos.2 to 4 were jointly beating respondent No.2. He submits that at that moment accused No.2 went inside the house and brought that bottle containing pesticides and forcibly administered the pesticides to respondent No.2. He then submits that as per the FIR, applicant No.1 was saying that since respondent No.2 does not have anybody to support her they should take advantage of the situation to kill her. This, according to the learned A.P.P., gives rise to inference of common intention. Shri. V. A. Sakhare, learned Counsel for respondent No.2 supports the contentions advanced by the learned A.P.P. and further elaborate the submissions.

6. Having heard the respective Counsel appearing in the matter, we

find that the act of administering insecticides is attributed to accused No.2 alone. It also appears from reading of the FIR that the quarrel had ensued between respondent No.2 on one side and the present applicants and their mother, Meerabai on the other. The allegation in the FIR is that Meerabai went inside the house and brought a bottle containing medicine and administered the same forcibly to respondent No.2. It is not alleged that the present applicants aided or assisted the act of administering pesticides. It will also be pertinent to mention that while the quarrel had started the applicants could not have imagined or visualized that their mother would bring the bottle containing pesticides and administer it to respondent No.2.

7. Having regard to the contents of the FIR common intention can be attributed to the applicants only for the act of beating which is a non cognizable offence under Section 323. Respondent No.2 was taken to S.R.T.R. Government Medical College and Hospital, Ambajogai for treatment. The injury certificate dated 01.05.2019 records a entry in column of nature of injury as poisoning. A sample was drawn from the patient/respondent No.2 and sent to Regional Forensic Science Laboratory (RFSL). The RFSL report dated 07.08.2019 does not reveal existence of any poison in the said sample. It will also be pertinent to mention that the prosecution has allegedly seized a bottle containing

pesticide from the house of the applicants on 28.05.2019 i.e. 28 days after the date of incident. RFSL report dated 07.08.2019 with respect to contents of the said bottle show existence of insecticide in the bottle. It should however be noticed that result of sample drawn from body of respondent No.2 does not show existence of poison/pesticides. Therefore, it cannot be said that the pesticide which was seized from the house of the applicants was administered to respondent no.2.

8. The material on record and more pertinently the FIR itself does not indicate that the present applicants have administered the insecticides. Likewise, it does not appear from the material on record that they had assisted accused No.2 in any manner whatsoever while she was allegedly administering pesticide to respondent No.2. We have already observed that accused No.2 had brought the bottle in the midst of the fight and therefore common intention for administering poison also cannot be attributed to the present applicants. There is absolutely no material to infer that the present applicants are responsible for the alleged offence under Section 328 of IPC or that they shared any common intention for the offence under the said provision with accused No.2. In such circumstances, no fruitful purpose would be served in prosecuting the applicants for the offence punishable under Section 328 of IPC. The other provisions mentioned in the FIR are non

cognizable, we are therefore of the opinion that the FIR against applicants needs to be quashed. In the result, we pass the following order :-

ORDER

(i) The application is allowed.

(ii) FIR No.89/2019 registered with Police Station, Dindrud, District Beed for the offence punishable under Section 328, 323, 504, 506 read with Section 34 of the IPC and Regular Criminal Case No.111/2020 pending before learned Judicial Magistrate First Class at Dharur are quashed against the applicants, namely, (1) Nagesh s/o Baliram Lagad and (2) Komal Baliram Lagad.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

A.G.Narwade