



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

29 CRIMINAL APPLICATION NO. 177 OF 2024

1. Pandurang S/o. Laxman Karale,
Age : 33 Years, Occu. : Service,
R/o. CIDCO Mahanar 1,
Plot No.385/2, Groth Center,
Tisgaon, Aurangabad.
2. Monali W/o. Pandurang Karale,
Age : 29 Years, Occu. : Education,
R/o. CIDCO Mahanar 1,
Plot No.385/2, Groth Center,
Tisgaon, Aurangabad.
3. Laxman S/o. Nathu Karale,
Age : 75 Years, Occu. : Nil,
R/o. Dahigaon She, Tq. Shevgaon,
Dist. Ahmednagar.
4. Shantabai W/o. Laxman Karale,
Age : 73 Years, Occu. : Nil,
R/o. Dahigaon She, Tq. Shevgaon,
Dist. Ahmednagar.

.... Applicants

VERSUS

1. The State of Maharashtra,
Through Investigation Officer,
Shevgaon Police Station,
Tq. Shevgaon, Dist. Ahmednagar.
2. Sonali W/o. Bhausahab Mote,
Age : 28 Years, Occu. : Labour,
R/o. Pawar Wasti, Ganeshnagar,
Tq. Shevgaon, Dist. Ahmednagar.
C/o. Bimrao S/o. Manikrao Game,
R/o. At Dahigaon She, Tq. Shevgaon,
Dist. Ahmednagar.

.... Respondents

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Advocate for Applicants : Mr. Vijay B. Kale
APP for Respondent No.1-State : Mr. G.A. Kulkarni
Advocate for Respondent No.2 : Mr. Ramrao G. Nirmal (Appointed)
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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

Dated : 07th July 2025

PER COURT :-

1. The present application has been filed for quashing the proceedings in R.C.C. No.247 of 2021, pending before the learned Judicial Magistrate First Class, Shevgaon, Dist. Ahmednagar, arising out of C.R. No.0301 of 2021, registered with Shevgaon Police Station, Dist. Ahmednagar, for the offences punishable under Sections 143, 147, 148, 149, 323, 326, 504, 506 of the Indian Penal Code, 1860 (for short "the I.P.C.").

2. Learned Advocate for the applicants has taken us through the entire charge-sheet and submits that original accused Nos.2 to 5 are before this Court. The main allegations regarding the assault and offence attracting Section 326 of I.P.C. are against original accused No.1 viz. Arjun Manikrao Game. As against the present applicants, it is stated that they had assaulted the father of the informant with fists and kicks blows, which would not find support in the medical

certificate. Applicant No.1 is serving in Setwel Enterprises Pvt. Ltd. Company. He has produced the attendance sheet for the month of May, including that of the date 22.05.2021, which would show that, at the time of alleged incident, he was present at the place of his work. The medical certificate paper would show that the history that was given by the injured was that, he had fallen on his own and he has no complaints against anybody. In the certificate, that was issued by Sasson General Hospital, Pune, only one injury has been stated i.e. fracture on right tibia fibula and it is stated to be by an accident and the nature of the injury is stated to be grievous. There is no mention about other physical injuries on the person of the father of the informant. It appears that the said injury has now been encashed by the injured as well as the informant to get the benefit as there is a dispute in respect of immovable property, which is going on. It would be then a futile exercise to ask the applicants to face the trial as they have not taken active part in the commission of crime.

3. Per contra, learned APP for the State and learned Advocate for respondent No.2 strongly opposed the application and submit that there is, *prima facie*, evidence against the applicants also. They shared a common object with the main accused, who had assaulted the father of the informant with a stick, which had caused

grievous hurt. They had also taken part in abusing and threatening and therefore, the trial should take place, wherein, if at all, it is desirable for the applicants to support their defence. They may prove the plea of alibi. The Medico-Legal certificate can be explained by the Medical Officer and therefore, this is not a fit case for exercising the powers under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.").

4. Respondent No.2 is the daughter of the injured. The injured is one viz. Bhimrao Manikrao Game. In the F.I.R., she admits that a dispute is going on in respect of the agricultural land, which, according to her, is the ancestral land and the dispute is with the main accused viz. Arjun Game. In the F.I.R., it is clearly stated that along with said Arjun Game, the present applicants arrived at the spot around 10.00 a.m. to 11.00 a.m. on 22.05.2021 and they started saying that why the father of the informant is seeking a partition as he has no son to succeed. Thereafter, the father of the informant was assaulted by a stick and fists and kicks blows by the accused persons. The injured was saying that his share be separated. Accused Arjun had then kicked the injured and with the help of stick in his hand, he assaulted on the right leg of the injured, causing him fracture and all the accused persons also threatened the injured.

5. The statements of four witnesses have been recorded, which state that the injured and victim Kausabai i.e. his wife, were standing in front of their house when the accused persons, in all five in numbers, came and started a dispute with the injured that why he is asked his share to be separated when he has only a daughter. As a result of the assault by accused Arjun, the right leg of injured Bhimrao got fractured. At this stage itself, we would like to say that the ingredients of Section 326 of I.P.C. requires an injury to be caused by means of an instrument of cutting, shooting, stabbing, etc. and the nature of injury should be grievous. Here, the injury that was sustained is fracture, therefore, certainly, it is grievous. However, he is stated the injury to have been caused by a stick. The panchnama would show a stick of 82 cm. in length and 11 cm. in width was seized from the spot. Now, it would be the expert opinion that is required as to whether such a stick would cause death. In order to prove the ingredients of Section 326 of I.P.C., what is required in this particular matter to be proved that any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death.

6. Now, a question has been raised in respect of the contents of IPD paper. A important point which is to be noted that

page No.47, that is produced before this Court along with the matter, is the photocopy alleged to be the first page of IPD paper. The subsequent papers are not provided by the applicants and those document is not forming a part of the charge-sheet. From where that document has been fetched by the applicants is not known. The address was given in the words "स्वतःहून पडले आहे, तक्रार नाही". However, if we see minutely, an amount of Rs.40,000/- has been written in between. There is overwriting on the document shows that the date of admission of the patient in the hospital was 3.04 a.m. on 24.05.2021. The document which is forming part of the charge-sheet is a certificate, wherein it is stated that the injured has sustained fracture on right tibia fibula, wherein the history given is stated to be an accident. It is then stated that the injury is grievous and in respect of the other matters, the proof will have to be led. The interpretation of those document cannot be the way the applicants want.

7. The documents on record would show that the present applicants had gone along with main accused Arjun Game, who was holding the stick in his hand. The common object is stated to be a dispute in respect of immovable property. The active role that is attributed to the applicants is assaulting the injured with fists and kicks blows. Therefore, these facts are sufficient to infer that the

present applicants were the members of unlawful assembly, wherein fracture has been caused to the right leg of the injured. We, therefore, do not take this to be a fit case for exercising our powers under Section 482 of Cr.P.C. The application deserves to be rejected. Hence, the following order.

ORDER

- I) The application stands rejected.
- II) Fees of appointed Advocate is quantified at Rs.7,000/- (Rupees Seven Thousand Only), to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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