



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 397 OF 2024

1. Ananta s/o Sopanrao Surung
Age : 36 years, Occ. Agriculture,
2. Sopan s/o Kisanrao Surung
Age : 68 years, Occ. Agriculture,
3. Kasturabai w/o Sopanrao Surung
Age : 55 years, Occ. Agriculture,
All R/o. Walkhed, Tq. Parhr,
Dist. Jalna

....

Applicants

VERSUS

1. The State of Maharashtra
Through Partur Police Station,
Tq. Partur, Dist. Jalna
2. Krishna @ Bhausahab s/o Shivajirao Surung
Age. 27 years, Occ. Agriculture,
R/o. Walkhed, Tq. Partur,
Dist. Jaln

... Respondents

(Res. No. 2 Original complainant)

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Advocate for Applicant : Mr. Londhe Bharat Govindrao

APP for Respondent No. 1-State : Mr. A. D. Wange

Advocate for Respondent No. 2 : Mr. Sharad Shinde (Appointed)

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**CORAM : SMT. VIBHA KANKANWADI
AND MANJUSHA DESHPANDE, JJ.**

DATE : 15th APRIL, 2025

PER COURT :

1. Present application has been filed initially for quashing
the FIR vide CR No. 340 of 2023 dated 12.08.2023 registered with

Partur Police Station, Tq. Partur, Dist. Jalna and later on, by way of amendment, for quashing the charge-sheet and the proceedings in Regular Criminal Case No. 234 of 2024 pending before the learned Judicial Magistrate First Class, Partur, Dist. Jalna for the offences punishable under Sections 326, 323, 504 and 506 read with 34 of the Indian Penal Code (hereinafter "IPC" for short).

2. Heard learned Advocate for applicants, learned APP for the respondent No. 1-State and learned Advocate for respondent No. 2.

3. Learned Advocate for applicants has taken us through the FIR, charge-sheet and other documents which have been produced by the applicants on record. He submits that the applicants have filed civil suit against the informant and his father in respect of the property i.e. agricultural land and when their possession and *wahiwat* has been obstructed, they were assaulted and non-cognizable offence has been registered. Even, in respect of the incident dated 10.08.2023, the non-cognizable offence was registered at the instance of the present applicants. Therefore, the FIR which is lodged against the applicants after two days of incident, is an afterthought action based on concocted story. No role has been attributed to the applicants No. 1 and 3 in the FIR and

therefore, it would be unjust to ask the applicants to face the trial.

4. Per contra, learned APP and learned Advocate appointed to represent the cause of respondent No. 2, strongly opposed the application and submit that perusal of the charge-sheet would show that there were five witnesses to the incident who have supported the FIR. The stick used as weapon in the present case has been recovered from the applicant No. 1. Injury Certificate supports the prosecution story. There might be dispute between the parties in respect of agricultural land but the applicants ought not to have taken the law in their hand thereby causing grievous hurt to the informant. Learned APP as well as learned Advocate for respondent No. 2 submit that this is not a case where this Court should exercise its powers under Section 482 of CrPC.

5. Respondent No. 2 has filed FIR on 12.08.2023 in respect of incident that had allegedly occurred at 10.30 pm on 10.08.2023 in village Walkhed, Tq. Partur, Dist. Jalna. The informant says that he and his father had come to the shop of Bhaskar Paikrao by tractor for purchasing cement pipes. The applicants were present before the said shop. The applicants started saying to informant that those pipelines should not be taken from the agricultural land belonging to the applicants. At that time,

the informant's father told that they will not take the pipes from the land of the applicants but that would be taken from Nala Road. The applicant No. 1 had pushed the father of the informant, as a result of which, he fell down. When informant helped the father to get up and he went to ask the applicant No. 1 for his act, at that time, applicant No. 1 assaulted the informant with stick on his right hand causing him injury. The applicants No. 1 and 2 gave threat to kill and assaulted the father of the informant. One Rameshar Surung, Bhaskar Paikrao and Babasaheb Paikrao intervened and separated them. Informant says that he went to Police Station Partur. He as well as his father were referred to Government Hospital, Partur and thereafter, the informant was referred to Civil Hospital, Jalna. He had taken treatment and then came to Police Station to lodge the FIR. Thus, it appears that the informant has tried to give reasons for the delay. Here, the question is whether offence as stated is made out even prima facie or not ?

6. A fact, before considering the further facts, is required to be taken note of that there are statements of Bhaskar Paikrao, Rameshwar Surung, Babasaheb Paikrao and Dilip Surung. Out of them, some were present and witnessed the incident. Then, there is a supplementary statement of informant recorded on 14.08.2023.

Of course, there is nothing new in that but to give clarifications here or there mainly in respect of the delay. The FIR and the witnesses have stated the presence of the applicant No. 3 at the spot. However, no specific role has been attributed to her. Mere presence will not even attract Section 34 of the IPC. Therefore, it would be unjust to ask her to face the trial.

7. However, as regards the involvement of applicants No. 1 and 2 is concerned, role attributed to applicant No. 2 is assault by fists and kicks and abuses as well as threat. So, in short, if the case is taken as it is, offence under Section 326 of IPC is not attracted against the applicant No. 2. However, the other sections are attracted.

8. Now, as regards Section 326 of IPC is concerned, the weapon that is used is stated to be a stick and the description of the same shows that it was about 4.5 ft. long wooden stick. Further dimensions of the same are not given. Perusal of the Injury Certificate of the informant would show that he sustained two injuries. The first injury is that contusion on right forearm, 3 x 1/5 cm / simple in nature with hard and blunt object. The second injury is stated to be after the x-ray, that was detected was a fracture ulna right lower 1/3rd which is stated to be displaced in size and

described as grievous injury with hard and blunt object.

9. Thus, the Injury Certificate supports the prosecution in saying that the informant had suffered grievous injury. The date of examination of the informant is 10.08.2023. Now, for proving ingredients of Section 326 of IPC, the prosecution has to show that the accused had voluntarily caused grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, etc. Now, 4.5 ft. wide wooden stick of which dimensions have not been given, cannot be said to be the instrument as described in Section 326 of IPC but when it is a grievous hurt that has been sustained by the informant, as per the *prima facie* record, Section 325 of IPC is certainly made out for proceeding the matter further. Hence, we take this to be a case where we can partly exercise our powers under Section 482 of CrPC. Hence, proceed to pass following order.

ORDER

1. Application is **partly allowed**.
2. The proceedings in Regular Criminal Case No. 234 of 2024 pending before the learned Judicial Magistrate First Class, Partur, Tq. Partur, Dist. Jalna arising out of CR No. 340 of 2023 dated 12.08.2023 registered with Partur Police Station, Tq. Partur, Dist. Jalna for the offence punishable under Sections 326, 323, 504 and 506 read with 34 of IPC, stands quashed and set aside as against applicant No. 3 Kasturbai W/o Sopanrao Surung.
3. The said proceeding stands quashed and set aside only to the extent of Section 326 of IPC against applicants No. 1 Ananta Sopanrao Surung and No. 2 Sopan Kisanrao Surung.
4. We clarify that offence under Section 325 of IPC is made out against applicants No. 1 and 2.
5. Accordingly, learned Trial Judge to proceed with the matter.

[MANJUSHA DESHPANDE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE