



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

25 CRIMINAL APPLICATION NO. 416 OF 2024

- 1] Tushar s/o Rajendra Choudhary
Age: 21 years, Occu. Education
R/o. Mahalaxmi Residency, Mantha Road,
Choudhary Nagar Old Jalna
Tq. & Dist. Jalna.
- 2] Devesh s/o Rajendra Choudhary
Age: 25 years, Occu. Education
R/o. Mahalaxmi Residency, Mantha Road,
Choudhary Nagar Old Jalna
Tq. & Dist. Jalna.
- 3] Krishna s/o Dilip Choudhary
Age: 26 years, Occu. Education
R/o. In front of Jindal Market,
New Jalna, Tq. & Dist. Jalna.
- 4] Rameshwar s/o Chandulal Kuril
Age: 27 years, Occu. Business
R/o. Laxminarayan Pura,
Mastagadh Old Jalna, Tq. & Dist. Jalna.
- 5] Tarun S/o. Narendrakumar Jangde
Age: 23 years, Occu. Education & Business
R/o. Sambhaji Nagar, New Jalna,
Tq. & Dist. Jalna.
- 6] Narendrakumar s/o Kanhayalal Jangde
Age: 70 years, Occu. Business,
R/o. Sambhaji Nagar, New Jalna,
Tq. & Dist. Jalna.

... Applicants

Versus

- 1] The State of Maharashtra,
Through: Kadim Police Station,
Jalna, Tq. & Dist. Jalna.
- 2] Nandkishor s/o Kanhayalal Jangde
Age: 56 years, Occu. Agri. & Business,
R/o. Panives Kadrabad, A/p. Jangade Nagar
(Kanhya Rukhmini Niwas), Ambad Road,
Old Jalna, Tq. & Dist. Jalna.

... Respondents

(Resp. No.2 is Orig. Complainant)

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Mr. Badribishan A. Darak, Advocate for Applicants.
Mr. V. K. Kotecha, APP for Respondent / State.
Mr. Satyajit S. Bora, Advocate for Respondent No.2.
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CORAM : **SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 27th January, 2025.

Per Court:

. Present application has been filed invoking the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, for quashing the proceedings in R.C.C. No.752 of 2023, pending before the learned Chief Judicial Magistrate, Jalna, arising out of FIR vide C.R. No.167 of 2023, dated 16th April, 2023 registered with Kadim Police Station, Jalna, Taluka and District Jalna, for the offence punishable under Sections 452, 427, 504, 506, 143, 147 and 149 of the Indian Penal Code.

2 Heard the learned counsel for the applicants, the learned APP and the learned counsel for respondent No.2.

3 It has been vehemently submitted on behalf of the applicants that, in fact, the present FIR is nothing but the counter blast to the FIR vide C.R. No.165 of 2023, registered with the same police station on 15th April, 2023, for the offence punishable under Sections 323, 324 and 504 read with 34 of the Indian Penal Code. The parties

are related and there was partition in respect of the family property. Yet, as per the contention of applicant No.1, there is an encroachment made from the side of respondent No.2. Applicant No.1 had applied for measurement and the same work was going on around 06:00 pm on 12th April, 2023. At that time, the son of respondent No.2 objected and the informant / respondent No.2 came with an iron rod and assaulted applicant No.1. Applicant No.1 had gone to the police station, who was then referred to the hospital, where he was admitted and discharged around 04:30 pm on 14th April, 2023, and then he had lodged the said FIR. Now, in respect of the alleged incident that had taken place at about 03:00 pm on 12th April, 2023, present respondent No.2 has lodged FIR on 16th April, 2023 and therefore, it can be certainly said that it is a counter blast. Further, active role is attributed to three persons only and against other three persons, there is no role, and therefore, the ingredients of the offence punishable under Sections 143, 147 and 149 of the IPC are not at all attracted against anybody. There is absolutely no investigation whereby any weapon has been recovered. Only statements of interested witnesses have been recorded. Therefore, it would be unjust to ask the applicants to face the trial.

4 Per contra, the learned APP as well as the learned counsel for respondent No.2 have strongly opposed the application.

They submit that taking into consideration the contents of the FIR and the charge-sheet, there is *prima-facie* evidence against the applicants. There are statements of independent witnesses also.

5 At the outset, we would like to say that if an FIR is prior in time than the FIR in question, this Court will not come to the conclusion that the FIR in question is a counter blast. It depends upon the facts alleged. Even as regards the FIR, which has been lodged by applicant No.1, it is to be noted that it is alleged to be in respect of the incident that had taken place around 06:00 pm on 12th April, 2023, but the FIR has been lodged on 15th April, 2023. Therefore, even applicant No.1 and the prosecution therein will have to explain the delay in lodging the said report. Certainly, in this case also, there is a delay, which will have to be explained by the prosecution. Here, at this stage, we go by the allegations and the contents in the charge-sheet. The FIR has been supported by the statements of the wife of respondent No.2 namely Mirabai Jangde, one Vivek Shivratan Jangde, who appears to be a nephew of the informant, and there is also one statement of Syed Samir Syed Ali, who says that he was present around 03:00 pm on 12th April, 2023 in the house of one Kapil Jangde, in connection with labour work. The allegations are that all the applicants had come together and entered the house of respondent No.2 and then, by giving abuses, had threatened. The applicants are

six in number. For attracting the offence punishable under Section 143 with 149 of the IPC, it will have to be proved by the prosecution that there was an unlawful assembly with common object. There need not be an active participation by each and every member of the unlawful assembly. Therefore, much depends upon the evidence that would be adduced. But at this stage, the common object that has been stated to be the Court proceedings and it is alleged that the applicants had threatened the informant on the point of said proceedings and asked him to take back the offence that has been registered against present applicant No.1.

6 When there is, *prima-facie*, case made out, this will not be the fit case where we should exercise our inherent powers under Section 482 of the Cr.P.C. The application stands rejected.

[SANJAY A. DESHMUKH, J.] [SMT. VIBHA KANKANWADI, J.]

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