



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

49 CRIMINAL APPLICATION NO.936 OF 2024

- 1 Bagan Amir Shaikh,
Age 42 yrs., Occ. Agri.,
R/o Kartala, Tq. Kandhar,
Dist. Nanded.
- 2 Mastan Amir Shaikh,
Age 29 yrs., Occ. Agri.,
R/o Kartala, Tq. Kandhar,
Dist. Nanded.

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Kandhar,
Tq. Kandhar, Dist. Nanded.
- 2 Santosh Narayan Yerekar,
Age 32 yrs., Occ. Agri.,
R/o Kartala, Tq. Kandhar,
Dist. Nanded.

... Respondents

...

Mr. K.T. Shirrurkar, Advocate for applicants

Mr. S.A. Gaikwad, APP for respondent No.1

Mr. B.K. Patil, Advocate (appointed through Legal Aid) for respondent No.2

...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 09th JUNE, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed initially for quashment of First Information Report vide Crime No.334/2023 dated 22.10.2023 registered with Police Station, Kandhar, Tq. Kandhar, Dist. Nanded, for the offence punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Sections 3(1)(r), 3(1)(s), 3(2)(Va) of the Scheduled Castes and the Scheduled Tribes (Prevention of atrocities) Act, 1989 and later on by way of amendment for quashing the proceedings in Special Case No.8/2024 pending before learned Special Judge, under the S.C. & S.T. Act, Kandhar, Dist. Nanded.

2 Heard learned Advocate Mr. K.T. Shirrurkar for applicants, learned APP Mr. S.A. Gaikwad for respondent No.1 and learned Advocate appointed through Legal Aid Mr. B.K. Patil for respondent No.2.

3 Learned Advocate for applicants has taken us through the entire charge sheet including First Information Report. He submits that informant

has given report in respect of two incidences. One is stated to have taken place at 4.00 p.m. on 21.10.2023, which was in respect of his son. It is then stated that agricultural servant of applicant No.1 was found grazing the cattle belonging to applicants in the field of informant and, therefore, son of informant had objected. Thereafter, applicant No.2 went to the field and abused the son of informant. At the most, the offence under Section 504, 506 of the Indian Penal Code can be said to be made out, which is non cognizable in nature. Then informant states that around 8.00 a.m. on 22.10.2023 when the informant had gone to bring fodder for cattle, he met applicant No.2 and, therefore, informant asked him, as to why he had abused his son. At that place, applicant No.2 abused the informant in the name of caste and gave threat by rushing towards his person. Informant says that he got afraid and went to home. He does not say who was present at the said place and where the alleged incident had taken place. No independent witness had heard applicant No.2 giving abuses in the name of caste to informant. But, then informant comes with a story that when he was in the house around 12.30 p.m., both applicants came to his house and by standing in courtyard they dragged the informant on the public road by asking as to why he had assaulted their agricultural servant. Then abuse in the name of caste was given and he was assaulted. Informant's sister and nephew came to rescue, at that time, applicant No.2 had caused injury to the sister of

informant near her right thumb. One Hussain Bagan Shaikh and Bagan Amjat Shaikh assaulted nephew of informant and then the quarrel was separated by one Dnyanoba Eknath Gaikwad, Mobin Shadul Shadul Shaikh and others. In fact, Haseena Bagan Shaikh had lodged report against present informant on 23.10.2023 and that is the real incident which has taken place around 11.00 a.m. She was abused in filthy and abusive language and in retaliation present First Information Report has been lodged. It is tainted with *mala fides* and, therefore, the application deserves to be allowed.

4 Per contra, learned APP as well as learned Advocate appointed through High Court Legal Services Sub Committee, Aurangabad for respondent No.2 strongly object the application and they submit that evidence has been collected. The story in respect of incident that had taken place around 12.30 p.m. on 22.10.2023 is supported by not only by relative, sister and nephew, who are the victims, but also by the neighbouring persons, who are not relatives. One Dnyanoba Eknath Gaikwad and Mobin Shadul Shaikh @ Pinjari have supported the First Information Report. Sister of informant was referred for medical examination and even the nephew was referred for medical examination. The Medico Legal Examination of informant supports that he had suffered a blunt injury to the head on the back side. Statements of witnesses have also taken under Section 164 of the

Code of Criminal Procedure. Under such circumstance, no case is made out for quashing First Information Report and the proceedings.

5 Here, it is to be noted that there is no dispute that informant is a member of Scheduled Caste. He is from the same village where the applicants are residing. Therefore, possibility of knowledge of caste of informant to the accused cannot be ruled out. No doubt, the informant was not witness to the incident dated 21.10.2023; yet, he says that said incident has informed to him by his son. That incident was the triggering point for the further dispute, when applicant No.2 is stated to have met the informant around 8.00 a.m. on 22.10.2023. Though it is alleged that he had given abuses in the name of caste to the informant, it has not been heard by any independent witness. But, as regards the incident that is stated to have occurred at 12.30 p.m., the said incident is supported by sister, nephew of informant as well as the neighbours Dnyanoba Eknath Gaikwad and Mobin Shadul Shaikh. As per the law laid down in **Hitesh Verma vs. State of Uttarakhand and another** [(2020) 10 SCC 710] the incident to get attracted the offence under Section 3(1)(r) and 3(1)(s) of the Atrocities Act it should be heard by an independent witness (not being the relative or friend). In this category, at this *prima facie* case we can consider that Dnyanoba Eknath Gaikwad and Mobin Shadul Shaikh are the persons who are not the relatives

and friends of informant. All these witnesses have stated that quarrel had started and abuses were given by applicants along with one Hussain Bagan Shaikh. As against applicant No.2, it is also stated that he had caused injury to sister of informant by means of knife, thereby attracting the ingredients of Section 324 of the Indian Penal Code. The said knife has been recovered under Section 27 of the Indian Evidence Act.

6 As regards the alleged counter First Information Report is concerned, it is to be noted that it is filed after the present First Information Report was registered. Therefore, we cannot consider the said First Information Report as a counterblast. It may be the other way round. Thus, there appears to be *prima facie* evidence to attract all the offences under which the charge sheet has been filed and, therefore, this is not a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Application stands rejected.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)