



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1856 OF 2023

- 1 Shudhodhan Pralhadrao Hanmante,
Age 23 yrs., Occ. Education,
R/o At Ancholi, Post Kolambi,
Tq. Naigaon, Dist. Nanded.
- 2 Sahebrao Maroti Kamble,
Age 20 yrs., Occ. Education,
R/o At Post Raher, Tq. Naigaon,
Dist. Nanded.

... Applicants

... Versus ...

- 1 The State of Maharashtra
Through Police Station, Naigaon,
Tq. Naikgaon, Dist. Nanded.
- 2 Vyankati Ananda More,
Age 70 yrs., Occ. Agri.,
R/o At Ancholi, Post Kolambi,
Tq. Naigaon, Dist. Nanded.

... Respondents

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Mr. V.B. Patil, Advocate for applicants

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

Mr. S.B. Ghatol Patil, Advocate for respondent No.2

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

RESERVED ON : 09th JULY, 2025

PRONOUNCED ON : 28th JULY, 2025

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

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 initially for quashment of First Information Report vide Crime No.101/2022 dated 29.06.2022 registered with Police Station, Naigaon, Tq. Naigaon, Dist. Nanded, for the offence punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and later on by way of amendment for quashing the proceedings in Regular Criminal Case No.1/2023 pending before learned Judicial Magistrate First Class, Naigaon.

2 Heard learned Advocate Mr. V.B. Patil for applicants, learned APP Mr. S.A. Gaikwad for respondent No.1 and learned Advocate Mr. S.B. Ghatol Patil for respondent No.2.

3 Learned Advocate for applicants has taken us through First Information Report and entire charge sheet and he submits that respondent No.2 has alleged that incident had taken place in front of his house around 12.00 p.m. on 15.06.2022, however, he has lodged First Information Report on 29.06.2022 and the delay has not been explained at all. In fact, applicant No.1 had lodged First Information Report on 17.06.2022 vide Crime

No.96/2022 with the same Police Station for the offence punishable under Sections 452, 324, 323, 354, 354-D, 143, 147, 504, 506 of the Indian Penal Code, 1860 and under Sections 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii), 3(1)(w) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for the sake of brevity hereinafter referred to as “**the Atrocities Act**”). Certainly, to defeat the rights of present applicant No.1 a belated First Information Report has been lodged. Applicant Nos.1 and 2 are the members of Scheduled Castes. Informant had abused in the name of caste and family members of informant by forming unlawful assembly had assaulted and caused injuries to sister and mother of applicant No.1. Injuries are caused with the help of stick and axe. Under the said circumstance, it would be an abuse of process of law if the applicants are asked to face the trial.

4 Per contra, learned APP for respondent No.1 strongly opposed the application and submitted that there appears to be the cross cases and, therefore, the presence of other side is admitted by applicants. If we consider First Information Report lodged by applicant No.1 and First Information Report in the present matter, the time and place of incident appears to be the same and, therefore, this is not a fit case where this Court should exercise its powers under Section 482 of the Code of Criminal Procedure. Learned APP

rather submitted that prior to the amendment to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act the legal position was different. Section 14 and Section 2(1)(d) of the Atrocities Act i.e. prior to the amendment the Special Court was held to be a Court of Session and, therefore, it could not have taken cognizance directly as a Court of original jurisdiction without the case being committed to it by a Magistrate in view of Section 193 of the Code of Criminal Procedure. In **Gangula Ashok and another vs. State of A.P.** [(2000) 2 SCC 504] this view was taken. However, later on with the amendment in the Act itself Section 14 provides for taking cognizance for the offence directly by the Special Court and, therefore, now, the charge sheets are presented before the Special Courts and Special Court takes cognizance. However, when it comes to the cross case, it is the cardinal principle that both the cases should be tried by the same Judge and, therefore, Regular Criminal Case No.1/2023 deserves to be transferred to the Special Court where the Special case on the basis of First Information Report No.96/2022 filed by present applicant No.1 is pending. He relies on the decision in **Faizal and another vs. State of Kerala** [(2024) 2 KLT 852], wherein under similar circumstances by taking recourse to Section 323 of the Code of Criminal Procedure, which empowers Magistrate for the committal of the case, the case was transferred to Special Court for the Atrocities Act.

5 Here, it is to be noted from impugned First Information Report in present matter i.e. Crime No.101/2022 and First Information Report vide Crime No.96/2022 that both are in respect of the incident that had taken place at 12.00 p.m. on 15.06.2022 in village Ancholi, Tq. Naigaon, Dist. Nanded. The place also appears to be the same. That means, those are the cross cases. In respect of the informant in both matters the presence is admitted. In the charge sheet in question there are eye witnesses, who have stated that applicant No.1 with the help of handle of axe had assaulted and caused injury to Shivshankar, who is the grandson of respondent No.2. The Medico Legal Certificate shows that he has sustained Contused Lacerated Wound on left occipital region and contusion and it appears that he was then referred to hospital at Nanded. Both were simple injuries. The case record of Dr. Shankarrao Chavan Government Medical College and Hospital, Vishnupuri, Nanded would show that further treatment was given to Shivshankar. One Krishna Ananda More has also suffered injuries, those were simple, however, it was with axe which is the instrument of cutting. *Prima facie* Section 324 of the Indian Penal Code gets attracted, which is cognizable offence. Therefore, there is no question of exercise of powers for quashing the proceedings. The delay can be explained and that cannot be the sole ground on which First Information Report and the proceedings can be quashed and set aside. In fact, there is delay in lodging the report for

applicant No.1 also, because the incident had taken place at 12.00 p.m. on 15.06.2022, whereas he has lodged the report around 19.46 hours on 17.06.2022.

6 We agree to the submissions on behalf of learned APP that both the cases are required to be tried together i.e. by the same Judge in order to avoid the complications and also it should be seen in cross complaints as to which party is the aggressor. Such course of action has to be taken under Section 323 of the Code of Criminal Procedure and for this purpose we would rely on the decision in **Anil Bhaskar Sonavane vs. The State of Maharashtra** [(1976) 78 Bombay LR 325, **Nathi Lal vs. State of U.P.** [1990 SCC (Cri.) 638] and **State of M.P. vs. Mishrilal (dead) and others** [AIR 2003 SC 4089]. The Hon'ble Kerala High Court had relied on **Nathi Lal** (supra) and also stated that in **Sudhir and others vs. State of M.P.** [(2001) 2 SCC 688] the said principles were reiterated. The question was, as to whether the Magistrate can adopt the procedure under Section 323 of the Code of Criminal Procedure in present case where the cross case is under the Atrocities Act of which cognizance has been taken by the Special Court. Section 323 of the Code of Criminal Procedure states that if the Magistrate feels that the case is one which ought to be tried by Court of Session, then he can commit under the said provision. Now, here, we are distinguishing the Special Court from

the Court of Session. But, then it can be stated that the procedure cannot be hurdle in dispensation of justice, wherein it is required that these two cases should be tried by one Judge. Certain provisions of the Code of Criminal Procedure are made specifically applicable to the Atrocities Act, however, at the same time the Atrocities Act is a Code in itself. Section 20 of the Atrocities Act makes provision for act to override other laws which states that -

“Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.”

The provision of Section 323 of the Code of Criminal Procedure cannot be said to be inconsistent, rather it is helpful even to the Special Court to come to just conclusion in the matter.

7 Therefore, we direct learned Judicial Magistrate First Class, Naigaon to commit Regular Criminal Case No.1/2023 to the Special Court before whom the Special Case is pending arising out of First Information Report No.96/2022. Such order be passed within a period of one month and for that purpose the applicants are directed to remain present before learned

Magistrate on 04.08.2025.

8 With the above observations, Criminal Application stands rejected.

9 Parties to act upon authenticated copy of this order.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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