



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2453 OF 2023

1. Dildar @ Dilawar Iliyas Khan  
Age 63 years, Occ. Nothing
2. Shahbaj Dildar @ Dilawar Khan  
Age 32 years, Occ. Service (Private)

Both R/o. Raza Manzil, Nurani  
Colony, Jamkhed,  
Tq. Jamkhed, Dist. Ahmednagar

...Applicants

Versus

1. The State of Maharashtra  
Through P.I. Jamkhed Police  
Station, Tq. Jamkhed,  
Dist. Ahmednagar
2. Sachin Chandrakant Devadhe  
Age 35 years, Occ. Service  
(police Constable), working at  
Jamkhed police station  
R/o. Jamkhed, Tq. Jamkhed  
District Ahmednagar

...Respondents

.....  
Mr. T.M. Tandale, Advocate for the applicants  
Mrs. P.R. Bharaswadkar, A.P.P. for the respondents  
.....

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

**DATED : 12<sup>th</sup> AUGUST, 2025**

**O R D E R (PER SANJAY A. DESHMUKH, J.) :-**

1. Heard learned advocates for the applicants and learned  
A.P.P. for the respondents.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") for quashing of the First Information Report (for short "F.I.R.") vide C.R. No. 126 of 2023, dated 31.03.2023, registered with Jamkhed police station, District Ahmednagar, for the offences punishable under sections 160 of the Indian Penal Code, 1860 (for short "I.P.C.") and the consequential criminal case bearing S.C.C. No. 483 of 2023 pending before the Judicial Magistrate, First Class, Jamkhed, District Ahmednagar.

3. The informant averred in the report that he is serving in the police department, attached to Jamkhed police station, Jamkhed, district Ahmednagar. On 30.03.2023, at about 22.30 hours, the Police Inspector, Shri Mahesh Patil, had called the informant as well as A.P.I. Sunil Bade and the police constable Dalvi, in his office and informed them that he had received a information that an affray was going on at Tapneshwar road, Jamkhed, between two groups. They were directed to go there and verify the same. The informant alongwith A.P.I. Mr. Bade and police constable Mr. Dalvi went to Tapneshwar Road and saw that a quarrel between two groups was going on. They were beating each other by fist and kick blows. The said quarrel was rescued by the police staff and one Ashru Sitaram

Nimonkar. After their quarrel, in the enquiry they told their names as (1) Dilawar Iliyas Khan, (2) Shahabaz Dilwar Khan, (3) Aptab Sayyad Shahibaj, (4) Shamir Sayyad, and other unknown 3 to 4 persons, all R/o. Jamkhed. On the request of Dilawar Iliyas Khan and Shahabaz Dilawar Khan, they were sent for taking medical treatment, in a private vehicle. Therefore, the report was lodged against the applicants and other accused persons.

4. Learned advocate for the applicants submitted that the applicants have been falsely implicated in the crime. Since the applicants had opposed for illegal construction of a garden, the report has been lodged with malafide intention and with personal grudge. The applicants are respectable persons in the society and to pressurize them not to raise their voice against the illegal construction, the present report has been lodged against them. The learned advocate for the applicants lastly prayed to allow the application.

5. Learned A.P.P. for the respondents strongly opposed the application by submitting that the applicants have committed a serious crime, thereby disturbing the public peace and tranquility. The names of the applicants are mentioned in the report with specific roles attributed to each of them. Hence, they cannot be exonerated

from the criminal liability under Sections 160 of the I.P.C. It is lastly prayed to reject the application.

6. We have perused the report and the charge sheet. For invoking the offence of affray as defined in section 159 of the IPC, it is the requirement that when two or more persons fight in a public place and disturb the public peace, they are said to commit an affray. Essentially, an affray is a public fight that disrupts the public tranquility. The punishment for offence of affray is for one month and the said offence is cognizable.

7. In the present case, neither in the report nor in the statements of witnesses, it has been averred by the informant or stated by the witnesses that there was disturbance to the public peace because of said fight. Even if the report is taken as it is, it can be inferred that the incident has taken place there. The presumption cannot be drawn that because of fight the public peace was disturbed. In absence of essential ingredients for disturbance of the public peace, the prosecution against these applicants is not sustainable under Section 160 of the I.P.C., as the report or the statements of witnesses do not establish the affray. In absence of such material disturbance to public peace, the prosecution under Section 160 of I.P.C. is not legal.

8. Considering the facts and circumstances of the case and reasons stated above, asking the applicants to face the trial would be an abuse of process of the Court. The case is made out for exercise of powers under section 482 of the Cr.P.C. We are therefore, inclined to allow the application, in the interest of justice to prevent the abuse of process of the Court. Hence, the following order:-

#### O R D E R

- I. The application stands allowed.
- II. The F.I.R. vide C.R. No. 126 of 2023, dated 31.3.2023, registered with Jamkhed police station, District Ahmednagar, for the offences punishable under sections 160 of the I.P.C. and the consequential criminal case bearing S.C.C. No. 483 of 2023 pending before the Judicial Magistrate, First Class, Jamkhed, District Ahmednagar, stand quashed and set aside as against the present applicants.

**(SANJAY A. DESHMUKH, J.)      (SMT. VIBHA KANKANWADI, J.)**

rlj/