



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1020 OF 2023

1. Mohd. Ayub s/o Mohd. Haji Sab
Age: 45 years, Occu.: Business,
R/o. Hyderbag No.1, Degloor Naka,
Nanded.
2. Mohd. Yakub s/o Mohd. Haji Sab
Age: 43 years, Occu.: Business,
R/o. Barkat Complex, Khoja Colony,
Nanded.

.. Applicants

Versus

1. The State of Maharashtra
(Through Police Inspector,
Police Station, Itwara, Nanded.)
2. Mohd. Ibrahim Mohd. Naziruddin Tadvi
Age: 37 years, Occu.: Business,
R/o. Dhangar Tekadi, Fatejang Nawab
Masjid, Old Gunj, Nanded.

.. Respondents

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WITH

CRIMINAL APPLICATION NO.2901 OF 2023

1. Mohammed Ibrahim Mohammed Naziruddin
Age: 36 years, Occu.: Business,
2. Mohammed Ameenuddin Mohammed
Nazeeruddin
Age: 38 years, Occu.: Business,

3. Mohammed Aneesuddin Mohammed
Nazeeruddin
Age: 35 years, Occu.: Business,
All R/o. Itwara, Nanded,
District Nanded.

.. Applicants

Versus

1. State of Maharashtra
Through Police Station Itwara
Nanded, District Nanded.
2. Nilofar Sharif Yakub Sharif
Age: 38 years, Occu.: Household,
R/o. Kacchi Colony, Sainagar,
Nanded, Tq. And Dist. Nanded.

.. Respondents

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Mr. V. C. Patil (Ashtekar), Advocate for the applicants in Criminal Application No.1020 of 2023 and for respondent No.2 in Criminal Application No.2901 of 2023.

Mr. Mahesh K. Bhosale, Advocate for the applicants in Criminal Application No.2901 of 2023 and for respondent No.2 in Criminal Application No.1020 of 2023.

Mr. S. A. Gaikwad, APP for respondent No.1/State in both the applications.

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

DATE : 18 JUNE 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Both the applications have been filed invoking the inherent powers under Section 482 of the Code of Criminal Procedure for quashing the FIRs and subsequently, by making amendment, the proceedings. Those

are stated to be the cross complaints and, therefore, taken up together for discussion.

2. Criminal Application No.1020 of 2023 has been filed initially for quashing the FIR vide Crime No.48 of 2023 registered with Itwara Police Station, District Nanded and later on, by way of amendment, for quashing the proceedings in Special Case No.92 of 2023 pending before the learned Special Judge, under the Atrocities Act/3rd District Judge-1 and Additional Sessions Judge, Nanded, for the offences punishable under Sections 427, 323, 504, 506 read with Section 34 of Indian Penal Code, under Sections 3(2)(va), 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to the "Atrocities Act"), whereas Criminal Application No.2901 of 2023 has been filed initially for quashing the FIR vide Crime No.58 of 2023 registered with Itwara Police Station, District Nanded and later on, by way of amendment, for quashing the proceedings in Regular Criminal Case No.1295 of 2023 pending before the learned Judicial Magistrate First Class, Nanded for the offences punishable under Sections 427, 327, 323, 504, 506, 141, 142, 143, 149 of Indian Penal Code.

3. In Criminal Application No.1020 of 2023, respondent No.2 Mohd. Ibrahim Tadvī (hereinafter be would be referred to as "Tadvī") lodged the FIR vide Crime No.48 of 2023 with Itwara Police Station, District

Nanded. In the said FIR, he states that he runs a grocery shop by name Inamdar Trading Company. He knows the applicants Mohd. Ayub and Mohd. Yakub, as Yakub has chicken shop next to the godown which Tadvī has taken for storing his articles in Mutton Market, Itwara. He states that on account of parking four wheeler Eicher, which is used for transportation of chicken, in front of the godown, there were disputes between them. Tadvī states that round 10.15 p.m. on 10.02.2023, he received phone call of one Mohd. Salim informing that both the applicants, Yakub and Ayub were breaking the lock of the godown and, therefore, he should come immediately. Tadvī went to the godown wherein he saw that Ayub and Yakub were breaking the lock of the godown with iron rod. When he asked them about the same, they abused him and went. He then states that he put another lock and went home. On the next day around 11.30 a.m., when he went to the godown, he found that Eicher vehicle was parked in front of his godown. Therefore, he parked his motorcycle behind Eicher and went inside the godown. Around 12.00 noon, Ayub went in front of the godown and asked him to remove the motor vehicle as he want to take out his Eicher. Informant told that since he has parked his motorcycle in front of his godown in his premises, Ayub started abusing him in the name of caste. When he asked as to why he is abusing in the name of caste, he was again abused and threatened to kill. As he was frightened, Tadvī went

home on motorcycle. On 12.02.2023, Tadvī remained in the house of his brother-in-law, but when he was going around 9.30 p.m. on motorcycle from Itwara on 13.02.2023 and was in front of Fattenawab Masjid, Ayub and Yakub both met him and started abusing him in the name of caste. He was caught hold of at his neck, at that time, the brother-in-law of Tadvī and one Sandip Kedare went and separated them. After giving threat to kill, Ayub went from the spot. Thereupon, the FIR was lodged on 14.02.2023.

4. In Criminal Application No.2901 of 2023, respondent No.2 informant Nilopher Sharif Yakub Sharif (wife of Yakub) states that around 1.15 p.m. on 18.02.2023, when she was at home, they received phone call from one Syed Sajid Syed Shabir stating that Mohd. Ibrahim Tadvī and his brother Mohd. Faruq and Mohd. Ishan have come with some persons and JCB and they were destroying the wall of the poultry farm and office. Her husband Yakub as well as brother-in-law Ayub had gone out of station and she was alone with the children. She gave phone call to her brothers Syed Zuber and Kazi Zahab. Around 1.30 p.m., her brothers came to her house and all of those three persons went to Andhra Poultry Farm, Mutton Market, Itwara and reached there around 1.45 p.m. They found that all those three persons along with 10-12 persons were damaging the property. When she and her brothers had also tried to stop them, at that time, the labour told that the accused

persons have taken the two mobile phones of Pathan Mujiboddin and Syed Sajid forcibly. The accused persons threatened that the informant Nilopher and her brothers would be implicated in Atrocities case. They were assaulted and cash of Rs.13,000/- was taken away by them. The damage that was caused was around Rs.80,000/- to Rs.85,000/-.

5. Heard learned Advocate Mr. V. C. Patil (Ashtekar) for the applicants in Criminal Application No.1020 of 2023 and for respondent No.2 in Criminal Application No.2901 of 2023, learned Advocate Mr. Mahesh K. Bhosale for the applicants in Criminal Application No.2901 of 2023 and for respondent No.2 in Criminal Application No.1020 of 2023 and learned APP Mr. S. A. Gaikwad for respondent No.2 in both the applications. In order to cut short, it can be stated that all the Advocates have made submissions supporting their respective contentions in respective matters.

6. Taking into consideration the story above narrated in both the cases, it can be seen that those cases are not cross cases. The date of the offences in both the cases and also the place is different. It appears from the matter of Ayub and Yakub that they have lodged Regular Civil Suit No.106 of 2023 before the learned Civil Judge Senior Division Nanded against one Shaikh Farooq, Shaikh Wasim and Shaikh Ishan. However, we are unable to get that it is in respect of the same shop,

because informant Tadvī is not party to this civil suit. Now, as regards the Special Case is concerned, when there is investigation, certainly the incidences those were told were in fact four in numbers which stated to have occurred consecutively. As regards incident dated 13.02.2023 is concerned, certainly it appears to have occurred in a public place and the statements of witnesses would show that one Sandip Kedare had heard both the accused abusing Tadvī in the name of caste. Certainly, he would be an independent witness and, therefore, *prima facie* offences are made out. Therefore, this cannot be taken as a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure.

7. Now, as regards Criminal Application No.2901 of 2023, there are statements of witnesses, especially Syed Sajid, Syed Shabir, Pathan Mujiboddin, Mainoddin Pathan and Mohd. Moin Ahmed, wherein they have stated that the applicants herein i.e. Tadvī and his two brothers caused damage to the Poultry Farm shop wall, Mutton Market with JCB and other articles. Pathan and Syed Sajid have stated that their mobiles were forcibly taken from their possession. The spot panchanama records the damage that has been caused. Even the CCTV units have been damaged. The said proceedings also shows *prima facie* offences, therefore, this is also not a fit case to quash the FIR and the proceedings.

8. An impression was tried to be given while we were hearing the arguments that these two cases are the cross complaints. The only concern at that time was that Regular Criminal Case No.1295 of 2023 is triable by learned Judicial Magistrate First Class, whereas Special case is before the learned Special Judge, under the Atrocities Act. We were considering whether to transfer the case which is before the learned Judicial Magistrate First Class to the Special Judge, but as aforesaid, they are not cross cases and, therefore, they need not be transferred.

9. Taking into consideration the fact that the offences are *prima facie* made out, both the applications stand rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm