



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

30 CRIMINAL APPLICATION NO. 3863 OF 2023

1. Sanjay S/o Ganpat Jadhav
Age: 36 years, Occu: Agriculturist
2. Ushabai W/o Ganpat Jadhav
Age: 54 years, Occu: Household

Both R/o. Ward No.3,
Near Jagdamba Temple,
Sindhi Tanda, Tq. Umri,
Dist. Nanded.

...Applicants

Versus

1. The State of Maharashtra
Through the Police Station
Umari, District Nanded
2. Maroti S/o Ramsingh Jadhav
Age: 50 years, Occ: Agriculturist
R/o. Sindhi Tanda, Tq. Umri,
Dist. Nanded.

...Respondents

Advocate for Applicant : Mr. Krushna S. Solanke h/f Mr. S.J. Naik
APP for Respondent No.1: Mr. S.A. Gaikwad
Advocate for Respondent No.2 : Mr. G.J. Karne

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

DATED : 2nd APRIL, 2025

PER COURT :-

1. The present application has been filed initially for quashing of F.I.R. vide C.R. No. 238 of 2023, dated 25.8.2023, registered with Umri police station, District Nanded and later on for quashment of

proceedings of R.C.C. No. 39 of 2024, pending before the learned J.M.F.C. Umri, district Nanded for the offences punishable under Sections 323, 504 r.w. 34 of I.P.C.

2. Heard learned advocates for the respective parties. In order to cut-short, it may be stated that they have made submissions supporting their respective contentions.

3. Respondent No.2 reported to the police on 25.8.2023, about the incident that had taken place on 24.8.2023 at about 9.00 a.m. He had stated that when he was working in his house, at that time, the applicants went to his house. The informant had taken hand loan of Rs.1,00,000/- for more than 08 years prior to the F.I.R. and and he had returned the same about 08 years prior to F.I.R. Since the applicants were demanding the amount from him, the applicants started abusing him. In spite of the statement of the informant that he has already returned the amount to her husband, the applicant No.2 did not pay any heed and applicant No.1 abused and assaulted the informant by means of piece of brick, which caused injury to the right side of the chest. The quarrel was settled by one Rohidas Gulab Rathod and Rohidas Vitthal Rathod. The informant had then gone to the Government hospital for treatment.

4. During the course of investigation, the statements of witnesses have been recorded. Panchanama of spot was carried out. However, no article was seized from the spot. It is specifically mentioned in the spot panchanama that construction activities were going on nearby and because of the same, many bricks were scattered and therefore, it is not possible to state exactly because of which brick the injury has been caused and therefore, there was no seizure from the spot. However, on 05.10.2023, the investigating officer has shown execution of a seizure panchanama of pieces of bricks, weighing around 1 kg from applicant No.1, which is stated to be at the time of arrest and issuing notice under Section 41-A (1) of the Code of Criminal Procedure, 1973. The important point is to be noted that the investigating officer appears to be under confusion because the charge sheet states that applicants were arrested on 05.10.2023 and Sr. No.17 in the station diary entry No.17 states about the date and time of arrest of the accused as 13.08 hours on 05.10.2023 and notice under Section 41-A (1) of Cr.P.C. was also given. Even he has tick marked that accused have been released on bail. If notice was issued under Section 41-A (1), then there is no question of arrest of the applicants. The documents do not show that panchanama was prepared at the time of arrest. Section 324 of I.P.C. is still non bailable, as the amendment to make it bailable was not notified at all. Therefore, as regards, so called arrest of the

applicants is concerned, we reiterate that the investigating officer was totally confused and therefore, there could not have been seizure of any article under Section 165 of Cr.P.C. of the pieces of brick.

5. Another fact to be noted is that it is then stated that the present applicant No.1 had produced that piece of brick in the police station. Everything could not have happened on the same day. There is correction or interpolation in respect of timings. The said seizure is stated to be between 12.50 to 13.05 hours and whatever documents regarding *Chehrepatri* and the form of arrest attached alongwith the charge sheet (which is not panchnama of arrest), gives a timing as 13.08 hours. Thus, when the piece of brick was allegedly produced before the investigating officer, present applicant No.1 cannot be said to be an accused.

6. The statements of witnesses support the F.I.R. When their statements are taken as it is, the injury was caused with the help of piece of brick. The medico legal certificate of the petitioner shows that he had two injuries, one blunt trauma over chest which was stated to be simple and another was blunt trauma over right shoulder which is also simple. It was tried to be submitted on behalf of respondent No.2 that respondent No.2 had sustained fracture, however, the medico legal certificate does not support said

statement. If there would have been a document showing fracture i.e. grievous hurt, then the offence could not have been only under section 324 of I.P.C. but it would have taken in the aggravated form. As regards offence under Section 324 of I.P.C. is concerned, the ingredients of offence required that the said injury ought to have been caused by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or any means or by substance which is deleterious to the human body to inhale, to swallow, or to receive into the blood.

7. Here all pieces of bricks cannot be said to be a such kind of instrument. At the most, it could fulfill ingredients of section 323 of I.P.C.. But for that purpose, the report under section 154 of Cr.P.C. will not be maintainable, as the provisions of sections 323, 504 would then be non cognizable sections. Under these circumstances, it would be an abuse of process of law if the applicants are directed to face the trial. The case is made out for exercise of powers under section 482 of Cr.P.C. Hence, the following order:-

O R D E R

- I. The application stands allowed.
- II. The proceedings in R.C.C. No. 39 of 2024 pending before the learned Judicial Magistrate First Class, Umri, District Nanded arising out of F.I.R. vide C.R. No. 238 of 2023, dated 25.08.2023, registered with Umri police station, District Nanded for the offences punishable under Sections 324, 504 r.w. 34 of I.P.C. stands quashed and set aside as against the present applicants.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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