



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 3857 OF 2023

1. Namdev s/o Khanduji Kadpe,
Age: 56 Years, Occ.- Agri,
R/o: Raygavhan, Tq. Partur, Dist. Jalna.
2. Tukaram s/o Khanduji Kadpe,
Age: 53 Years, Occ.- Maharaj (*Kirtankar*),
R/o: Raygavhan, Tq. Partur, Dist. Jalna. **... Applicants**

Versus

1. The State of Maharashtra
Through: Police Inspector,
Dindrud Police Station,
Tq. Majalgaon Dist. Beed
2. Shaikh Nannubi w/o Shaikh Maheebub,
Age:- 50 years, Occu.: Household
R/o: Dindrud, Tq. Majalgaon Dist. Beed. **... Respondents**

...

Mr. Kayyum Najir Shaikh, Advocate for Applicants.

Mrs. P. R. Bharaswadkar, APP for Respondent No.1 / State.

Mr. Jay R. Raundale, h/f Mr. I. K. Wagh, Advocate for Respondent No.2.

...

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

DATE : 15th July, 2025.

ORDER: (Per Sanjay A. Deshmukh, J.)

1 Heard the learned advocates for the respective parties.

2 This application is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Cr.P.C.”) for quashing of the proceedings in R.C.C. No.297 of 2022, pending in the Court of the learned Judicial Magistrate First Class, Majalgaon, District Beed, for the offences punishable under Sections 307, 354, 354-B, 452, 323 and 506 read with 34 of the Indian Penal Code, 1860 (for short “the IPC”) and under Sections 3/25 of the Arms Act, arising out of FIR bearing Crime No.25 of 2022, dated 13th February, 2022, registered with Dindrud Police Station, Taluka Majalgaon, District Beed, for the offences punishable under Sections 307, 354, 354-B, 452, 323 and 506 read with 34 of the IPC and under Sections 4, 25 of the Arms Act.

3 Respondent No.2 / informant averred in the report that she is labourer by occupation, residing at Dindrud, Taluka Majalgaon, District Beed, with her son Firoz and two daughters. Her husband is a farmer. The entire family resides together. Her husband, son and her sister's son Syed Zuber Syed Akbar are being prosecuted for kidnapping. In connection with that case, the police came to their house for couple of times for inquiry.

4 The informant further averred that on 12th February, 2022, at about 08:30 pm, after dinner, her daughter-in-law Nafeesa Sheikh Firoz, her step-son Ejaz Maheebub Sheikh, and her sister's daughter-in-law Syed Nusrat wife of Zuber (resident of Kasari, Taluka Dharur) were present in the house. The informant and Nusrat slept in one room, her daughter-in-law Nafeesa and her children were in another room, and her step-son Ejaz slept on the terrace. At around 01:00 am in the night, someone knocked on the door. Upon asking who it was multiple times, a voice from outside responded that they were police officers. The informant opened the door and applicant Nos.1 and 2 entered the house. Applicant No.2 was carrying a gun in his hand. Alongwith them, there were two more unidentified persons. All four persons suddenly entered the house. Applicant No.1 asked the informant about the whereabouts of her husband and her son. The informant replied that she has no knowledge of the same. Upon this, the applicants caught hold her hands, due to which the bangles on her hands were broken and she sustained injuries. At that moment, applicant No.1 instructed one of the accompanying persons, addressed as Shidu, to take out his pistol. Shidu came there alongwith pistol. Upon seeing the weapon, the informant made hue and cry. Hearing this, Syed Nusrat wife of Zuber, came to intervene, but Applicant No.2 directed one of the other persons, namely Shivhar, that *"this is Zuber's wife, take her into the*

vehicle.” Thereafter, all the accused pulled the hair of both the informant and her daughter-in-law, tore off their blouses. The informant loudly called her step-son Ejaz. Ejaz rushed there. At that time, Shidu beat Ejaz with a heavy blow, causing him to fall, and pointed a pistol at him and threatened to eliminate him. After hearing that chaos, informant’s daughter-in-law Nafeesa and her two minor children started to cry loudly. Due to the stress and fear, the informant fainted. She regained consciousness after Ejaz poured water on her face. Thereafter, Ejaz informed the informant that the said persons had fled in a large white vehicle. Thereafter, she lodged the report.

5 The learned advocate for the applicants submitted that the applicants are falsely implicated in the crime. There is no cogent and acceptable material against the applicants. Vague and general allegations are made against her. He submitted that this Court has quashed the FIR and the consequential charge-sheet against co-accused Sivhar Pote and Shideshwar @ Shidu. He further submitted that the roles of the present applicants are similar to those of the said co-accused, Sivhar Pote and Shideshwar @ Shidu. He lastly prayed to allow the application on the ground of principle of parity.

6 The learned APP for the State and the learned counsel for respondent No.2 / informant strongly opposed the application and

submitted that the applicants are involved in a serious crime. Their names are specifically mentioned in the report and the allegations against them are of a grave nature. He submitted that the applicants do not deserve any discretionary relief in view of the *prima-facie* material against them. They lastly prayed to reject the applications.

7 Here, it is relevant to refer to the decision of the Honourable Supreme Court in ***Mohammad Wajid and Another Vs. State of U.P. and Another***, reported in, ***2023 SCC Online SC 951; 2023 INSC 683***, whereunder the Honourable Supreme Court held thus:-

“34. it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation....”

8 We have perused the charge-sheet, particularly, the report and the statements of the witnesses. The witnesses have stated similar facts as stated by the informant in her report.

9 It is an admitted fact that on 31st January, 2022, applicant No.1 – Namdev lodged the report against the family members of the informant alleging that they have kidnapped his son Keshav.

10 It is the contention of the learned counsel for the applicants that the FIR in question is counterblast to the FIR lodged by applicant No.1. The vague and general allegations of tearing of blouses of the informant and her daughter-in-law are made against the applicants, without pointing out specific role of the applicants or other co-accused. In the first part of the report, it is alleged that co-accused Shidu was armed with a gun and in the later part, it is alleged that co-accused Shidu was armed with a pistol. Though revolver is seized as per Section 27 of the Indian Evidence Act from co-accused Shideshwar @ Shidu, his application for quashing the proceedings is allowed by this Court. The incident itself is not found probable, as there is discrepancy about the use of pistol or gun. Though Section 307 of the IPC is invoked against the applicants, there is no such reliable material of attempt to commit murder either of the informant or

her daughter-in-law on the part of these applicants and co-accused. The intention to kill and attempt to kill is not establishing from the material placed on record by the prosecution, particularly report and statements of witnesses. The essential ingredients of Section 307 of the IPC are not established against the applicants.

11 The medical certificates of the informant and her daughter-in-law show that they sustained simple injuries. Those certificates have been issued 1 and ½ months after the injured were examined. From the nature of injuries sustained to the informant and her daughter-in-law, it is certainly a case of non-cognizable offence punishable under Sections 323 of the IPC.

12 As far as outraging of modesty of the informant and her daughter-in-law is concerned, there are allegations that the applicants and co-accused caught hold their hair, dragged them and torn down their blouses. However, these are vague and general allegations made against these applicants and the co-accused. In the statement of the informant recorded under Section 164 of the Cr.P.C., she has stated that these two applicants torn her blouse. Further, the witnesses particularly the daughter-in-law of informant has also not specified the role of these applicants and co-accused as to who exactly torn their blouses. Therefore, vague and general allegations of

tearing down the blouses of informant and her daughter-in-law are reasonably doubtful and not sustainable to hold the applicants liable for outraging the modesty as per Section 354 of the IPC. There is no such material against the applicants that they were willing to disrobe the informant and her daughter-in-law to invoke Section 354-B of the IPC. No such overt act is committed to establish the essential ingredients of Section 354-B of the IPC.

13 The incident is alleged to have been happened in the house of informant, is also doubtful to apply Section 452 of the IPC, so as to constitute an offence of house trespass. The eye-witnesses are family members of the informant. The alleged gun and white coloured vehicle is not seized. Therefore, it is found that it is a doubtful case.

14 The Division Bench of this Court while deciding **Criminal Application No.1290 of 2023** (*Sivhar S/o Karbhari Pote and another Vs. The State of Maharashtra and another*) by an order dated 1st September, 2023, pertaining to two co-accused (Sivhar Pote and Shideshwar @ Shidu), had considered every aspect of the case and granted relief of quashing of the report and the consequential charge-sheet to the said two co-accused. The alleged roles of the present applicants are similar to those of the said co-accused. Therefore, the applicants are entitled for the relief of quashing of the proceedings on

the principle of parity. It is important to note that co-accused Shidu, who produced alleged pistol under Section 27 of the Indian Evidence Act, was one of the applicants in that application. The informant or the State had not challenged the said order of quashment of the report and the consequential charge-sheet passed by the Division Bench of this Court in the Honourable Supreme Court. It has reached to finality. There are similar allegations against these applicants particularly outraging of modesty, house trespass etc.

15 Considering the facts and circumstances of the case and the law laid down in the case of ***Mohammad Wajid and Another (supra)*** as well as the reasons discussed above, compelling the present applicants to face the trial, certainly would be an abuse of the process of the Court. The case is made out for exercising powers under Section 482 of the Cr.P.C. We are, therefore, inclined to allow the application, in the interest of justice and to prevent the abuse of the process of the Court. Hence, the following order:-

ORDER

- I. The application is allowed.
- II. The proceedings in R.C.C. No.297 of 2022, pending in the Court of the learned Judicial Magistrate First

Class, Majalgaon, District Beed, for the offences punishable under Sections 307, 354, 354-B, 452, 323 and 506 read with 34 of the Indian Penal Code and under Sections 3/25 of the Arms Act, arising out of FIR bearing Crime No.25 of 2022, dated 13th February, 2022, registered with Dindrud Police Station, Taluka Majalgaon, District Beed, for the offences punishable under Sections 307, 354, 354-B, 452, 323 and 506 read with 34 of the Indian Penal Code and under Sections 4, 25 of the Arms Act, stands quashed as against the present applicants.

nga

[SANJAY A. DESHMUKH, J.] [SMT. VIBHA KANKANWADI, J.]