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30-APPLN-4700-2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

30 CRIMINAL APPLICATION NO. 4700 OF 2024

Uttamrao S/o Jagannathrao Lungare And Others

VERSUS

The State Of Maharashtra And Another

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Mr. Kamlakar J. Suryawanshi, Advocate for Applicants.

Smt. C. C. Kutti, APP for Respondent-State.

Mr. Kalyan V. Patil h/f Mr. S. R. Barlinge, Advocate for Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 10th JULY 2025.

PC :-

1. Heard for some time.
2. The learned Advocate for the applicants has pointed out averments in the complaint. He submits that the main allegations attracting ingredients of Section 354-B are only against the accused No.1, who is no more. There is no specific allegation against the present applicants. All the allegations are vague. So far as the present applicants are concerned, it is only alleged that the present applicants were on the spot to support of deceased accused No.1. A vague allegation is made that

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these accused also assaulted the informant. He submits that even the police did not find substance in her complaint and, therefore, no FIR was registered. Even the Superior Officer did not find any substance, and no direction was given to register the FIR. The informant, therefore, approached by way of filing a private complaint, in which the learned JMFC also rejected the prayer as regards Section 156(3) Cr.P.C. and directed the Respondent No.2 to record verification. It is only after recording of verification that the report under Section 202 of Cr.P.C. was called for from the police Station. The report only shows that some incident of assault by the present applicant had taken place. It is on that basis, the process came to be issued after recording the statements of two other witnesses.

3. Learned Advocate further submits that, in fact, the one of the applicants, i.e., accused Shivmurti Gheware, had filed a Civil Suit in the year 2005 itself. The same was decreed. Though the said decree was quashed and set aside in First appeal, a second appeal is now pending. This clearly shows that the dispute is, in fact, a civil dispute over the plot

No.5 where the incident allegedly took place.

4. It is his submission that the respondent is in habit of filing complaints. Her husband had filed four complaints earlier. First complaint was filed by the husband of the informant. The said complaint was dismissed for default by order dated 11th January 2023. Another complaint was filed by her husband bearing Criminal Case No.29/2003 in the Court of 8th JMFC, Aurangabad. The same came to be dismissed on merits on 14th July 2006. Third complaint was filed bearing RCC No.4558/2003 by the husband of the informant that also came to be dismissed on 10th April 2008. Fourth complaint was filed by brother of the husband of respondent bearing RCC No.1630 of 2003. The same also came to be dismissed by order dated 29th April 2008. He thus submits that the husband of the informant is in habit of filing complaints. All the complaints were filed only on a civil dispute. Thus, all the complaints were dismissed either on merits or for want of prosecution. He submits that now the complainant has filed present complaint based on false allegations. Not giving particulars clearly shows that the story is

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concocted. He submits that continuation of the proceeding under such circumstances is clearly an abuse of process of law. The complaint is actuated by malice. Relying on the ratio of the judgment in the case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***¹, and in clause (7) of the said judgment, he prays for allowing the Application.

5. Learned Advocate Mr. Patil vehemently opposed the application. He submits that the allegations would clearly show that the offence has taken place. The dispute is over the plot. In such a dispute, the applicants have taken law in their hands and tried to threaten the informant. Though the offence under Section 354-B of IPC is against only accused No.1, who is no more, the other allegations made against the present applicants clearly attract the provisions of Sections 323, 504 and 506 of the IPC. He thus prays for rejection of the application.

6. Learned APP supports the impugned order. She also raises the ground of availability of alternative remedy of filing a revision application.

1 AIR 1992 SC 604

7. Having heard the parties and going through the complaint, it is clearly seen that no specific instances are given to substantiate the allegations. Looking to the fact that earlier four complaints were filed, three by husband and one by brother-in-law of the informant and none of the complaints could be proved. One of the complaints was even dismissed for want of prosecution. In all the complaints, the dispute is shown as regards plot no.5. Admittedly, civil proceeding was filed and the same is now pending before this Court in the form of Second Appeal. This Court, at this stage, finds no possibility can be ruled out of malicious prosecution. The proceeding, thus, clearly appear to be out of vengeance. Considering clause 7 of the Bhajan Lal's judgment, this Court finds that continuation of the present proceeding would clearly be an abuse of process of law. Taking over all view, this Court is convinced to allow the writ petition. Hence, the following order:

ORDER

- (i) Criminal Application stands allowed.
- (ii) The impugned order dated 13th February 2023, passed by the

learned Judicial Magistrate, First Class, Aurangabad, in RCC No. 724/2019, issuing process U/s. 354-B, 323, 504, 506 r/w Section 34 of the IPC against the applicants, is quashed and set aside.

(iii) Application stands disposed off.

[KISHORE C. SANT, J.]