



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4027 OF 2023

Ganesh Vinayak Panchal,
Age-34 years, Occu:Private Service,
Residing at Nilanga, Taluka-Nilanga,
District-Latur, At present- Spine Road,
Shivtej Nagar, Pune.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through the Police Inspector,
Police Station, Nilanga,
Taluka-Nilanga, District-Latur,
- 2) Ashok Babuappa Kadadi,
Age-53 years, Occu:Business,
Residing at Adat Line, Nilanga,
Taluka-Nilanga, District-Latur.

...RESPONDENTS

...
Ms. Laxmi R. Thakur Advocate for Applicant.
Mr. A.D. Wange, A.P.P. for Respondent No.1.
Mr. S.B. Gastgar Advocate for Respondent No.2.
...

WITH

CRIMINAL WRIT PETITION NO.1058 OF 2021

- 1) Ashok S/o Babuappa Kadadi,
Age-53 years, Occu:Business,
R/o-Adat Line, Nilanga,
Taluka-Nilanga, District-Latur,

- 2) Pawan S/o Ashok Kadadi,
Age-23 years, Occu:Pvt. Service,
R/o-Adat Line, Nilanga,
Taluka-Nilanga, District-Latur,
Presently at Flat No.502,
Mukteshwar Apartment,
Near Adarsh Vidyalaya,
Bhandup(E), Mumbai-400078,
- 3) Sawan S/o Ashok Kadadi,
Age-18 years, Occu:Education,
R/o-Adat Line, Nilanga,
Taluka-Nilanga, District-Latur.
- 4) Mallama W/o Ashok Kadadi,
Age-48 years, Occu:Household,
R/o-Adat Line, Nilanga,
Taluka-Nilanga, District-Latur.
- 5) Prakash S/o Babuappa Kadadi,
Age-37 years, Occu:Business,
R/o-Adat Line, Nilanga,
Taluka-Nilanga, District-Latur.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Police Station, Nilanga,
Taluka-Nilanga, District-Latur,
- 2) Jyoti W/o Vinayak Panchal,
Age-55 years, Occu:Household,
R/o-Saraswati Colony, Nilanga,
Taluka-Nilanga, District-Latur.

...RESPONDENTS

...

Mr. S.B. Gastgar Advocate for Petitioners.
Mr. A.D. Wange, A.P.P. for Respondent No.1.
Ms. Laxmi R. Thakur Advocate for Respondent No.2.

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

DATE : 16th JULY, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Both the cases are the cross cases and therefore, taken up together.
2. Criminal Application No.4027 of 2023 has been filed by the applicant, initially for quashing the First Information Report (for short "the FIR") vide Crime No. 58 of 2021 registered with Police Station, Nilanga, District-Latur and subsequently for quashing the proceedings i.e. Charge-sheet No.103 of 2021, dated 18th October 2021, pending before the learned Judicial Magistrate First Class, Court No.2, Nilanga, District-Latur, for the offence punishable under Sections 452, 327, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code.
3. Heard learned Advocate Ms. Laxmi Thakur for the applicant in Criminal Application No.4027 of 2023 and for respondent No.2 in Criminal Writ Petition No.1058 of 2021, learned APP Mr. Wange for respondent No.1 in both the matters and learned

Advocate Mr. Gastgar for petitioners in Criminal Writ Petition No.1058 of 2021 and for respondent No.2 in Criminal Application No.4027 of 2023. In order to cut short, it can be stated that the learned Advocates for respective parties have argued in support of their contentions.

4. The fact which is on record is that informant Ashok Kadadi's daughter has lodged FIR with Solapur Police Station for various offences which are serious in nature, against one Nagesh Panchal, who appears to be the brother of the present applicant. Now, both these parties are coming with rival contentions. Informant Ashok Kadadi i.e. respondent No.2 in Criminal Application No.4027 of 2023, has contended that when he was in his house around 6.00 p.m., on 19th February 2021, along with his wife Mallama and daughter Sushma, his door was knocked. He opened the door and then the present applicant along with other three co-accused entered his house and started asking as to why the informant's daughter has filed R.C.C. No.604 of 2016 and why she is not withdrawing the same though it was told hundred times earlier. Nagesh, against whom that FIR with Solapur Police Station is lodged, was also there and he as well as his mother asked, as to where the daughter of the informant

Ashok is, as they want to kill her. When they were tried to resisted by the informant, he was assaulted with scythe. Present applicant is stated to be standing outside the house and instigated Nagesh and Jyoti to drag the informant and his family members out of the house and he was also giving threat to kill. When Jyoti had scuffle with the wife of informant Ashok, her *Mangalsutra* was taken away by Jyoti. Thus, it can be seen that a specific role has been attributed to the applicant in the FIR. There are witnesses in the form of wife of Ashok, daughter of Ashok and eye witness Santosh Wamanrao Jadhav and another eye witness Sangameshwar Swami. There is injury certificate of Ashok, wherein he had received three injuries. Under such circumstance, we do not take this to be a fit case where this Court can exercise its powers under Section 482 of the Code of Criminal Procedure.

5. It was tried to be submitted that the ingredients of Section 327 and 324 of the Indian Penal Code will not get attracted taking into consideration the simple injuries. Here it is to be noted that the point can be raised by the applicant before the trial Court who would frame the charge. The charge will have to be framed according to the role attributed but when there is

certainly a role attributed, the proceedings cannot be quashed even in partly by going deeper into the aspect, as to what is the exact role. Further it appears that the applicant wants to take the plea of alibi. He appears to be a Deputy Manager, serving with KSB Limited (Power Project Division) Factory, located at D-II Block, MIDC, Chinchwad, Pune and his attendance report has been produced on record. The plea of alibi will have to be proved by the applicant at the time of trial and since the documents on which the applicant is relying are the private documents, the proof is necessary, which cannot be gone into by this Court.

6. Learned Advocate Ms. Laxmi Thakur relies on the decision in *Mohammad Wajid and another vs. State of U.P. and others, Criminal Appeal No.2340 of 2023 (Arising out of S.L.P. (Criminal) No.10656 of 2022)*, decided by the Hon'ble Supreme Court on 8th August 2023, wherein it has been observed that:-

"Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with

care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, 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."

7. The above observations are definitely binding on this Court, but here it is a cross case. The presence of other co-accused is admitted and therefore, when it comes to disputed questions of facts regarding whether the presence of the accused was there or not, it will have to be left for the evidence to be adduced before the trial Court and therefore, we dismiss Criminal Application No.4027 of 2023.

8. Now, as regards Criminal Writ Petition No.1058 of 2021 is concerned, the same has been filed by the petitioners, initially for quashing the First Information Report (for short "the FIR") vide Crime No. 56 of 2021 registered with Police Station, Nilanga, District-Latur, for the offence punishable under Sections 354, 327, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code and Section 135 of the Maharashtra Police Act, and subsequently by way of amendment, for quashing the Charge-sheet i.e. proceedings in R.C.C. No.871 of 2021, pending before the learned Judicial Magistrate First Class, (Court No.2), Nilanga, District-Latur. As aforesaid, it is the cross complaint, but from the FIR itself it is required to be considered as to whether the offences under which the FIR is registered are getting attracted or not. The informant respondent No.2 in this matter is Jyoti Vinayak Panchal and she has admitted that an offence was registered against her son Nagesh in June 2015. According to her, there was love affair between her son Nagesh and the daughter of Ashok till April 2015 and it was not approved by Ashok. She has not given the date of marriage of daughter of Ashok, but then as regards the incident dated 19th February 2021 is concerned, the informant states that around 5.30 p.m. she went into the house of Ashok Kadadi and told Ashok's wife

Mallama that since informant's son Nagesh is getting service, Mallama should convince Ashok to withdraw the case against Nagesh. At that time, Ashok's brother Prakash and Ashok's sons Pawankumar and Sawan as well as Mallama started saying that why she has come and if she wants that the case has to be withdrawn, then for that the amount of Rs.12,00,000/- was demanded and then informant Jyoti states that she was abused. Ashok assaulted her on left thigh, Pawan caused injury with Katti on her right thigh, Sawan and Mallama also assaulted her. Then Ashok, by pulling her hair, caused her to lie on the ground and then her blouse was torn. Again Prakash had assaulted her with stick. Her *Mangalsutra* was snatched and she was given threat. She is also giving name of same witness Santosh Waman Jadhav as the person who had intervened and separated the quarrel. From reading of the FIR, it can be seen that in fact the informant had gone to the house of Ashok. The presence of Ashok, his wife, two sons and brother would be natural and therefore, it will not attract the ingredients of Sections 143, 147, 148 and 149 of the Indian Penal Code. The other Sections are getting attracted.

9. Learned Advocate appearing for the petitioners in this case

submitted that statement of Nagesh would show that he was not present at the spot, but then he states that said witness Santosh Jadhav had called him and then he went to the Police Station. Thereafter he took his mother to Nilanga Police Station and then to Nilanga Government Hospital, who was then referred further to Civil Hospital, Latur. Statement of Shailesh Jadhav has been taken, however, his presence has not been stated by the informant.

10. Here, it is to be noted that the FIR is supported by injury certificate and at the cost of repetition we would like to say that it is stated to be the cross case where the presence of the accused is admitted. Therefore, we may not go into the other aspects which are disputed. Here also there is witness by name Santosh Jadhav who has seen the incident. But then he has stated that the incident had taken place in front of the house of Ashok, whereas informant says that she had gone inside the house of Ashok. These minute details are part of appreciation of evidence, which can be considered by the trial Court. However, as aforesaid, when in the FIR it is stated that informant herself had gone inside the house of the accused, the presence of accused will not amount to unlawful assembly. Hence, to that

extent only, the proceedings deserves to be quashed and set aside. Hence, we proceed to pass following order:-

ORDER

(I) Criminal Application No.4027 of 2023 stands rejected.

(II) Criminal Writ Petition No.1058 of 2021 stands partly allowed.

(III) The proceedings in R.C.C. No.871 of 2021, pending before the learned Judicial Magistrate First Class, (Court No.2), Nilanga, District-Latur, arising out of the First Information Report vide Crime No. 56 of 2021, registered with Police Station, Nilanga, District-Latur, stands quashed and set aside, to the extent of offence punishable under Sections 143, 147, 148, 149 of the Indian Penal Code, as against petitioner Nos. 1 to 5 i.e. -
1) Ashok S/o Babuappa Kadadi, 2) Pawan S/o Ashok Kadadi, 3) Sawan S/o Ashok Kadadi, 4) Mallama W/o Ashok Kadadi and 5) Prakash S/o Babuappa Kadadi.

(III) It is clarified that the matter to proceed under the other Sections, i.e. Sections 354, 327, 504 and 506 of the Indian Penal Code and Section 135 of the Maharashtra Police Act.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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