



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1958 OF 2018

1. Harishchandra Jagannath Kale
 2. Bapu Arun Kale
 3. Ganesh Chandrakant Jagtap
- .. Applicants**

Versus

1. The State of Maharashtra
Through Investigating Officer,
Karjat Police Station, Tq. Karjat,
Dist. Ahmednagar.
 2. Shahji @ Shankarrao Bhausahab
Rajebhosle
- .. Respondents**

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WITH

CRIMINAL APPLICATION NO.3872 OF 2019

- Baban s/o Bapu Janjire
- .. Applicant**

Versus

1. The State of Maharashtra,
Through the Police Inspector,
Karjat Police Station,
Tq. Karjat, Dist. Ahmednagar.
 2. Shahaji @ Shankarrao Bhausahab
Rajebhosale
- .. Respondents**

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Mr. K. J. Tandale, Advocate for applicants in Criminal Application No.1958 of 2018.

Mr. R. R. Karpe, Advocate for applicant in Criminal Application No.3872 of 2019.

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

Mr. M. P. Shinde, Advocate for respondent No.2 in Criminal Application No.1958 of 2018.

Mr. V. V. Tarde, Advocate for respondent No.2 in Criminal Application No.3872 of 2019.

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**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

DATE : 06 JANUARY 2025

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

. Both the applications are arising out of the same proceedings, hence, taken up together for disposal.

2. The applicants in both the matters seek quashment of the charge-sheet dated 10.01.2018 i.e. the proceedings in R.C.C. No.08 of 2018 before the learned Judicial Magistrate First Class, Karjat, District Ahmednagar arising out of FIR vide Crime No.224 of 2017 dated 06.08.2017 registered with Karjat Police Station, District Ahmednagar for the offences punishable under Sections 307, 143, 147, 148, 149, 324 of Indian Penal Code and Section 25(3) of Indian Arms Act.

3. Heard learned Advocate Mr. K. J. Tandale for the applicants in Criminal Application No.1958 of 2018, learned Advocate Mr. R. R. Karpe for the applicant in Criminal Application No.3872 of 2019, learned APP Mr. S. A. Gaikwad for respondent No.1/State in both the matters, learned Advocate Mr. M. P. Shinde for respondent No.2 in Criminal Application No.1958 of 2018 and

learned Advocate Mr. V. V. Tarde for respondent No.2 in Criminal Application No.3872 of 2019. In order to cut short it can be said that all the Advocates have made submissions in support of their respective contentions.

4. It has been vehemently submitted that the FIR is arising out of the property dispute and on the basis of concocted story. Though it is stated that accused Baban Janjire i.e. applicant in Criminal Application No.3872 of 2019 had shot fire from revolver, it has not been caused any injury to anybody. Therefore, the ingredients of Section 307 of Indian Penal Code cannot be attracted. In fact, there was a CCTV installed covering the spot and the CCTV footage was made available to the investigating officer. He has not taken cognizance of the same. Such application was even filed before the Superintendent of Police, Ahmednagar, yet a tainted investigation has been carried out, which is certainly at the behest of the informant. Prior to the registration of the present crime, the daughter-in-law of applicant Harishchandra Kale had lodged offence against informant and other 50 persons vide Crime No.219 of 2017 for the offence punishable under Sections 307, 395, 354, 427, 143, 147, 148, 149 of Indian Penal Code and Section 4 punishable under

Section 25 of the Indian Arms Act. The present FIR is to give counterblast. The distance between the spot and the public health center is only 500 meters. Anyone could have reached the hospital within ten minutes by walk, however, the informant reached the hospital after about six hours with no injury at all. At the most the injury can be said to be simple one, but for that purpose Section 307 of Indian Penal Code has been wrongly pressed into service. No weapon has been seized in the matter. Therefore, it would be unjust to ask the applicants to face the trial.

5. Learned APP as well as learned Advocate for respondent No.2 in both the matters strongly opposed the applications and submit that since the charge-sheet is filed, let the trial be held.

6. It is to be noted that the applicants themselves are accepting that there is a cross case. The daughter of applicant Harishchandra has filed the said FIR. Proceedings as well as FIR cannot be quashed only on the point of delay as it is explainable. According to the daughter of applicant Harishchandra that offence has been committed by present respondent No.2 in Criminal Application No.3872 of 2019 and 50 more persons,

whereas respondent No.2 states that the offence is committed by 21 named and 8-10 unidentified persons. It also appears that there is a dispute pending before this Court now in respect of the property. Therefore, at the end of the trial, the trial Court will have to consider the cross cases together and to see which party is aggressor. In the present FIR, respondent No.2 has stated that when he had altercation with applicant Harishchandra, applicant Baban took out revolver from his waist and by pointing out towards informant threatened to shot him, whereupon the brother of the informant questioned, at that time, co-accused Rohidas asked the other persons to take the iron rods, sticks, swords etc. and they would see the informant and others. It is then also stated that applicant No.2 Bapu and applicant No.3 Ganesh went to a battery shop nearby, brought some acid like substance and threw it towards the informant. Informant then due to fear ran backwards, but the substance had fallen over his pant and shirt from backside. They were assaulted from backside when they were running. The other persons were chasing informant including Baban with revolver. Applicant Harishchandra asked Baban as to whether the pistol is for showing it, he should use it and then Harishchandra snatched

revolver from Baban and shot towards the informant. However, the bullet did not hit them. There was pelting of stones from both sides, as it appears some other persons had also gathered. When the said bullet had not caused any injury to informant and his brother, there was no question of going immediately to the hospital and then in the FIR, he has explanation for the same also. Statements of witnesses are supporting the FIR. Therefore, in respect of all the offences under Indian Penal Code, there is *prima facie* evidence.

7. The only question is in respect of Section 3 punishable under Section 25 of the Indian Arms Act. It can be seen from the charge-sheet that learned Judicial Magistrate First Class, Karjat had taken cognizance of the offence on 10.01.2018 i.e. on the date of presentation, however, the entire charge-sheet, especially Ferist does not show that previous sanction of the District Magistrate was obtained. Section 39 of the Indian Arms Act reads thus :-

“39. Previous sanction of the district magistrate necessary in certain cases.—No prosecution shall be instituted against any person in respect of any offence under section 3 without the previous sanction of the district magistrate.”

Therefore, for prosecuting a person for the offence punishable under Section 3 of the Indian Arms Act, previous sanction of the District Magistrate is mandatory. When no such sanction was taken, cognizance of the offence for the said offence ought not to have been taken by the learned Magistrate. To that extent only, the prosecution needs to be quashed and set aside. Hence, the following order :-

ORDER

- I) Both the criminal applications stand partly allowed.
- II) The proceedings in R.C.C. No.08 of 2018 pending before the learned Judicial Magistrate First Class, Karjat, District Ahmednagar arising out of FIR vide Crime No.224 of 2017 dated 06.08.2017 registered with Karjat Police Station, District Ahmednagar stands quashed and set aside to the extent of offence under Section 3 punishable under Section 25 of the Indian Arms Act only.
- III) It is clarified that the prayer for quashing the said proceedings for other offences stands rejected.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm