



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

36 CRIMINAL APPLICATION NO.3441 OF 2023

Rizwan Zafar s/o Abdul Salam Deshmukh,
Age 42 yrs., Occ. Business,
R/o Opp. Aqsa Masjid, Aqsa Colony,
New Shahenshah Nagar, Beed,
Tq. & Dist. Beed.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through City Police Station,
Beed, Tq. & Dist. Beed.
- 2 Naseeb Khan Hayat Khan,
Age 72 yrs., Occ. Pensioner,
R/o Khatakपुरa, Beed,
Tq. & Dist. Beed.

... Respondents

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Mr. G.R. Syed, Advocate for applicant
Mr. A.D. Wange, APP for respondent No.1
Mr. T.R. Quadri, Advocate for respondent No.2

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WITH
CRIMINAL APPLICATION NO.4282 OF 2023

- 1 Wajahat Ashraf Baig,
Age 30 yrs., Occ. Service,
R/o Khasbagh, beed,
Tq. & Dist. Beed.

- 2 Farida Begum w/o Ashraf Baig,
Age 44 yrs., Occ. Household,
R/o Khasbagh, beed,
Tq. & Dist. Beed.

... Applicants

... Versus ...

- 1 The State of Maharashtra
Through City Police Station,
Beed, Tq. & Dist. Beed.
- 2 Naseeb Khan Hayat Khan,
Age 72 yrs., Occ. Pensioner,
R/o Bungalow of Hamid Chaus,
Near Meraaj Masjid, Shahenshah Nagar,
Beed, Tq. & Dist. Beed.

... Respondents

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Mr. C.V. Dharurkar, Advocate for applicants in Appln/4282/2023 and
Appln/2063/2024

Mr. A.D. Wange, APP for respondent No.1 in Appln/4282/2023 and
Appln/2063/2024

Mr. T.R. Quadri, Advocate for respondent No.2 in Appln/4282/2023 and
Appln/2063/2024

...

WITH
CRIMINAL APPLICATION NO.2063 OF 2024

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

DATE : 07th FEBRUARY, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Criminal Application No.3441 of 2023 and Criminal Application No.4282 of 2023 have been filed initially for quashing First Information Report vide Crime No.161/2023 dated 23.07.2023 registered with City Police Station, Beed, Tq. & Dist. Beed and by way of amendment for quashing proceedings in Summary Criminal Case No.1628/2023 pending before learned Judicial Magistrate First Class, Beed, for the offence punishable under Sections 323, 447, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocates Mr. G.R. Syed and Mr. C.V. Dharurkar for applicants, learned APP Mr. V.K. Kotecha for respondent No.1 and learned Advocate Mr. T.R. Quadri for respondent No.2 – informant, in respective matters. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 The informant had lodged said First Information Report on 23.07.2023 in respect of an incident that had allegedly taken place on 21.07.2023. He has stated that he stays alone, however, his wife and sons reside at a different place along with other members of family. Around 11.00 p.m. on 21.07.2023 he heard that somebody is calling outside, therefore, he

went outside the house, where he saw applicants. He asked them, as to why they have come at night time, at that time, accused Ashraf asked him to go away as he has made encroachment on their property otherwise he should suffer the dire consequences. Accused Ashraf Baig then caught hold of the neck of informant and started abusing him. Accused Rizwan twisted his right hand and slapped him. When the informant shouted, his neighbours Yakub Abed Shaikh and Irfan came near him. Therefore, while going the accused threatened him to kill.

4 From the perusal of said First Information Report it can be seen that only Section 447 of the Indian Penal Code was the cognizable offence and, therefore, we had considered the spot panchnama and as per the said panchnama, the spot was shown by the informant himself. There is a sketch also drawn. Towards East side there appears to be two doors to the house and to the structure behind it the doors are towards South. There is then the open space. Towards West it is shown that there is Urdu School of Mirza Ashraf Baig and his house i.e. the house of accused No.1. However, the opening of his house is not towards the East. Therefore, he cannot directly go in the open space of the informant and further towards the South there is a Nala. It appears that from the East-West strip towards South of the informant the accused and his family members would have been going

towards the Eastern road but the spot of incident is to the back side of the second structure of the house. When the opening is towards South and East, why anybody would go towards the back side i.e. on the Western side, when there is no opening or door towards West. Therefore, the spot panchnama does not support the contention of informant. In the First Information Report it is then stated that when the informant shouted, his two neighbours came. Shaikh Abed Shaikh Latif and Shaikh Irfan Shaikh Liyakat are the two persons who have been shown to be the eye witnesses. Perusal of statements of these two persons under Section 161 of the Code of Criminal Procedure would show that the incident had taken place in front of the house of informant and when they were going from Katkatpura, Beed Road. The road which is shown in the map appended to the spot panchnama shows that the road is North-South and towards East. As aforesaid, the doors of the house of the informant are towards East and South for the two separate structures. If these two eye witnesses were going from the road towards East side, then the spot of the Western side is absolutely not visible.

5 It appears that accused Ashraf had filed civil suit against one Zahrunissa Begum Abdul Salam Deshmukh, which was then compromised. It was in respect of specific purpose of the contract and it is stated to be the same property where the informant states that he is residing. However, we

will not go in those facts of the case which might be then disputed and to which the informant was not a party.

6 Thus, perusal of contents of charge sheet would show that except the bare statements of informant there is nothing and the incident appears to be improbable. Continuation of the proceedings would be an abuse of process of law. As aforesaid, except Section 447 of the Indian Penal Code the other offences are non cognizable and, therefore, in the entirety the proceedings and First Information Report needs to be quashed and set aside. Applications deserve to be allowed. Hence, following order.

ORDER

- i) Criminal Application No.3441 of 2023 and Criminal Application No.4282 of 2023 stand allowed.
- ii) Proceedings in Summary Criminal Case No.1628/2023 pending before learned Judicial Magistrate First Class, Beed arising out of First Information Report vide Crime No.161/2023 dated 23.07.2023 registered with City Police Station, Beed, Tq. & Dist. Beed, for the offence punishable under Section 323, 447, 504, 506 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant **Rizwan Zafar**

Abdul Salam Deshmukh in Criminal Application No.3441 of 2024 and applicants 1) **Wajahat Ashraf Baig** and 2) **Farida Begam w/o Ashraf Baig** in Criminal Application No.4282 of 2023.

iii) Criminal Application No.2063 of 2024 stands disposed of.

(**SANJAY A. DESHMUKH, J.**)

(**SMT. VIBHA KANKANWADI, J.**)

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