



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

114 CRIMINAL APPLICATION NO. 634 OF 2024

SHAIKH MUBARAK SHAIKH CHAND AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. A. M. Inamdar, Advocate for Applicants  
Mr. S. V. Hange, APP for the Respondent/State

CORAM : RAJNISH R. VYAS, J.

DATE : 23<sup>rd</sup> MARCH, 2026

**PER COURT :-**

1. Heard.
2. This is an application for quashing of first information report and consequent filing of the charge-sheet, so also order taking cognizance. The first information report in question is dated 28.10.2023 bearing No. 279/2023 registered with Talwada Police Station, Tq. Gevrai, District Beed for the commission of offence punishable under Sections 380, 457 read with 34 of the Indian Penal Code.
3. The informant, Shaikh Raees Shaikh Yusuf, has alleged in the said report that he shifted to Beed in the year 2007, since earlier murder of his father had taken place. He has further stated that in the agricultural field situated at Sirasdevi, he had constructed the house. He further alleged that, in

the year 2022, the marriage of his brother Yunus had taken place and the articles which were received from the marriage were kept in the house.

4. According to the first information report on 19.10.2023 at about 9.00 a.m. when he was at home at Beed, he received a phone call from the neighbor by name Shaikh Saddam who disclosed to the informant that by breaking open the lock of the house in agricultural field, present applicants, on 18.10.2023 at about 8.30 p.m. have taken the fridge, old cupboard, T.V., cooler, eight bags of grains and other material. On the basis of said information supplied, the report was lodged to the Police Station on 28.10.2023.

5. The investigation was carried out and after completion of it, a charge-sheet came to be filed against the applicants for the commission of offence punishable under Sections 380, 457 read with 34 of the Indian Penal Code. The Court has taken cognizance of the same.

6. Learned Advocate for the applicants submitted that there is absolutely no *prima facie* case made out against the present applicants and the first information report is an example of the abuse of criminal law. He submitted that the sister of the present applicants had filed R.C.S. No. 971/2018 against the informant and the family members on 27.04.2018 and due to which the first information report came to be lodged. He further

submitted that nothing has been seized from the present applicants. In the afore stated background, he requests for quashment of first information report and consequent criminal proceedings. He has submitted that in first information report reference is also made that some unknown persons have committed theft.

7. Learned APP has contended that the final report clearly shows that it was the applicants who have committed the crime. He submits that the material produced on record, shows that the present applicants have entered the house and taken the material out of the house.

8. The offences registered against the present applicants are under Sections 380, 457 of Indian Penal Code. Section 380 of the Indian Penal Code is speaks about the theft in a dwelling house etc., whereas Section 457 of Indian Penal Code speaks about lurking house-trespass or house-breaking by night in order to commit a crime punishable with imprisonment. The Section 34 of IPC speaks about common intention is also inferred.

9. In the aforesaid background, it is necessary to see the material produced by the prosecution, more particularly the statement of one Shaikh Saddam Shaikh Akbar, who has categorically stated that on 18.10.2023 at about 8.30 p.m., when he was at his home, he heard the noise of the some pots falling on the ground from the house of the informant and therefore,

proceeded towards the house of informant. At that time he saw the present applicants taking fridge, old cupboard, T.V., cooler, eight bags of grains and others household articles with them. Since the accused persons were four in number, he did not questioned them but immediately called the informant and his brother who did not pick up his phone.

10. Thereafter, again the morning 9.00 a.m. he telephoned the informant and narrated the incident to him. The aforesaid statement clearly shows that the incident was seen by this person. Learned counsel for the applicants has contended that this witness is not residing adjacent to the house of the applicants and false evidence is created. Suffice is to say that, at the stage of deciding application under Section 482 of the Code of Criminal Procedure, detailed inquiry akin to a mini trial cannot be conducted. What is required to be seen is whether the first information report and documents filed along with it make out a *prima facie* case or not.

11. The law in this regard is crystal clear. The Hon'ble Apex Court in case of ***State of Haryana and others Vs. Bhajan Lal and others, 1992 Suppl (1) SCC 335*** has laid down the parameters in paragraph No.102 which reads thus:

*“102. In the backdrop fo the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of*

*decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myraid kinds of cases wherein such power should be exercised.*

*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and*

*continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with malafide and /or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

12. Thus, the question whether the eye witness Saddam Shaikh is a planted witness or cannot be look into at this stage. Further so far as the contention that it was the civil dispute which has resulted into the registration of FIR, suffice it to say that the civil dispute was initiated in the year 2018, whereas the first information report is lodged in the month of October, 2023. The testimony of eye witness, Saddam Shaikh cannot be evaluated on the basis of defence taken by accused in an application under Section 482 of Cr.P.C. In that view of the matter, I find that the applicants have not made out any case for interference under Section 482 of Cr.P.C. Hence, following order is passed.

#### **ORDER**

. Application stands dismissed.

**(RAJNISH R. VYAS)**  
**JUDGE**

ssp