

ORDER BELOW EX.36 IN SESSIONS CASE NO.90/2013

State Vs. Dnyandev and others.

1- This is an application U/sec. 227 of the Cr.P.C. on behalf of the accused for their discharge from the alleged offences U/sec. 395, 442, 323, 506 r/w. 34 of the I.P.C.

2- The applicants stated that, they are innocent and have not committed any offence as alleged. They are falsely involved by the complainant at the instigation of Babarao Nivrutti Gavte, who is a close relative of the complainant. The applicants were implicated with the motive to harass and defame them because of the crime No. 10/2009 dated 07/03/2009 was registered under sections 3(1)(10) of the Atrocity Act, and under section 7(1)(D) of the P.C.R. Act and under section 447,506 r/w 34 of the I.P.C.

3- It is stated that, the applicant no.3 is a retired class I officer of Govt. of Maharashtra. His wife is a lecturer in an eminent college affiliated to the Mumbai University and the applicant no. 3 is now a practicing lawyer in the Bombay High Court and is mainly residing at Mumbai. The other applicants are his close relatives and they have status in the society.

4- It is stated that, applicant no.3 had lodged crime no.07/2009 on 23-02-2009 against Pandhari Vitthal Gavate who is the husband of the present complainant. The said offence was also lodged against the brothers of Pandhari Gavate. The complainant had filed false application in the court of learned JMFC at Loha and as per the directions of the said court police had registered

present offence against the applicants. It is stated that, the present offence is a counter blast to FIR no. 07/2009 which was lodged by the applicant no.3. One Datta Vishwanath Gavate is shown as a witness in the crime no. 07/2009 and he is the complainant of FIR no.64/2010 dated 29-07-2010. This clearly shows that, the Gavate family is in collusion with each other for defaming and harassing the present applicants.

5- It is stated that, the alleged offence occurred on 24-02-2009 at about 10.00 p.m. but the FIR was registered belatedly after 11 days on 07-03-2009. The concerned police station and D. S. P. did not take cognizance of the complaint against the present applicants. That, no independent witnesses who are residing in the adjoining houses of the complainant were examined by the police. The witnesses whose statements were recorded by the police are residing far away from the alleged place of occurrence. There was no recovery by the police of any alleged goods, gold ornaments etc. from the present applicants. The complainant and her family members were not examined medically regarding their injuries etc. The totality of this circumstances show that, the present complaint is an off-shoot of the complaint made by the applicant no.3 on 23-02-2009.

6- The Ld. A.P.P. had filed his say below Exh. 36 and has opposed the present application. He stated that, all the grounds mentioned by the applicants are based on evidence therefore, the application be kindly rejected.

7- Heard both the sides. The learned Advocate for the applicants repeated the contents of the application during his arguments. He stated that, the complainant had deliberately filed false FIR to give counter blast to the FIR filed by the applicant no.3. The sole intention of the complainant is to defame and harass the present applicants therefore, the present application be kindly allowed and the applicants be kindly discharged from all the offences. The learned Advocate relied on the judgment of Hon'ble Bombay High Court in the matter of *Priya Sharan Maharaj @ Yadvendra Parashar Vs. The State of Maharashtra*, Cr. L.J. 1995 0 3683. He submitted that, the Hon'ble Bombay High Court had discharged the applicants in the said matter as there was delay in lodging the FIR, in sending the copies of FIR to the Magistrate under section 157 Cr. P. C., disclosing the incident immediately, etc. he argued that, the observations of the Hon'ble High Court were applicable to the present matter hence, present application be kindly allowed.

8- The learned APP on the other hand, vehemently opposed the present application and stated that, there is sufficient material on record to put the accused for trial and the truthfulness of the said material cannot be gone into at this stage hence, the present application be kindly rejected. He relied on the judgment of Hon'ble Supreme Court in the matter of *State of Tamilnadu Vs. N. Suresh Rajan*, reported in (2014) 11 SCC 709.

9- The facts of the matter of Priya Sharan Maharaj (supra) are totally different and therefore, in my humble opinion

the ratio of the said matter is not applicable to the facts and circumstances of the present case. The ratio of the Hon'ble Supreme Court in the matter of N. Suresh Rajan (supra) is applicable to the present case. The Hon'ble Supreme Court in para no. 11 of its judgment observed that, "it is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at the face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out".

10- I have perused the F.I.R. and statements of the witnesses. The complainant has categorically stated in her complaint that, the applicant no.3 had purchased a 'Gairan' land besides her land without the permission of the Government. He is trying to grab her land by giving complaints without any reason. On 24-02-2009 between 10.00 p.m. to 11.00 p.m. all the accused entered into her house and forcibly took away Rs.20,000/-, gold ornaments and threatened to kill her family members. On hearing her cries persons gathered there and the accused ran away from there. There are statements of witnesses Datta Vishwanath Gavate, Pandurang Govind Gavate, Radhabai Atmaram Gavate etc. on record and they have substantiated the allegations of the

complainant in their statements.

11- That, some of the present applicants has taken plea of alibi and stated that, they have been falsely implicated to give counter blast to the FIR no.07/2009 lodged by the accused no.3. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of the charge. At the time of framing of charge the court has only to see that, there is prima facie case and if the statements of the witnesses taken on its face value coupled with other documents, makes out a probability of involvement of the accused. In the instant case, there is prima facie evidence available to charge the applicants for the said offences as mentioned in the charge sheet. There are sufficient grounds to proceed against them the grounds for putting them on trial.

12- It is informed by the accused no.1 on dated 26-03-2018 that, accused no. 2 had died on 21-07-2017 and he had produced a alleged photocopy of the death certificate of the said accused. The accused no.1 and his Advocate had informed that, there are going to produce the original death certificate of the said accused on record but, till today they have not produced the same. Appropriate order will be passed regarding the said accused if, his original death certificate is produced on record by his real brother i.e. accused no.1. Therefore, the court was unable to pass order of abatement regardint the said accused. Hence, in the facts and circumstances, I proceed to pass the following order :-

ORDER

Application is rejected and disposed off.

Sd/-

Date: 25-10-2018

(V. S. Gaike)
Addl. Sessions Judge, Kandhar.

CERTIFICATE

I affirm that the contents of this PDF judgment /order are same word to word as per the original order.

Name of the Stenographer:- A. M. Onkare.

Court Name:-District Judge-1 & Additional Sessions Judge,
Kandhar

Date:- 25-10-2018

Judgment/order signed by the Presiding Officer On:-25-10-2018

Judgment/order uploaded on :- 30-10-2018