



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5049 OF 2024

- 1 Tanaji Shivaji Solankar,
Age 40 yrs., Occ. Advocacy,
- 2 Vanmala w/o Tanaji Solankar,
Age 30 yrs., Occ. Law Student,
- 3 Shivaji Maruti Solankar,
Age 65 yrs., Occ. Farmer,
- 4 Prabhawati w/o Shivaji Solankar,
Age 57 yrs., Occ. Housewife,

All are permanent r/o Koregaonwadi,
Tq. Omerga, Dist. Dharashiv.

... Applicants

... Versus ...

- 1 The State of Maharashtra
Through the Officer In-charge,
Police Station, Omerga,
Tq. Omerga, Dist. Dharashiv.
- 2 Smt. Maya Satish Solankar,
Age 32 yrs., Occ. Housewife,
R/o C/o Venkat Mane, Koregaonwadi,
Tq. Omerga, Dist. Dharashiv.

... Respondents

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Mr. R.R. Karpe, Advocate h/f Mr. S.P. Dhobale, Advocate for applicants

Mr. N.R. Dayama, APP for respondent No.1

Mr. N.L. Jadhav, Advocate for respondent No.2

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

RESERVED ON : 10th MARCH, 2025

PRONOUNCED ON : 04th APRIL, 2025

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

1 Present application has been filed for quashment of proceedings in Regular Criminal Case No.163/2020 pending before learned Judicial Magistrate First Class, Omerga, Dist. Osmanabad arising out of First Information Report vide Crime No.132/2020 dated 26.04.2020 registered with Police Station, Omerga, Dist. Osmanabad/Dharashiv, for the offence punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. R.R. Karpe holding for learned Advocate Mr. S.P. Dhobale for applicants, learned APP Mr. N.R. Dayama for respondent No.1 and learned Advocate Mr. N.L. Jadhav for respondent No.2. Perused affidavit-in-reply of respondent No.2 Smt. Maya Satish Solankar.

3 It has been vehemently submitted on behalf of applicants that perusal of First Information Report and charge sheet is not disclosing the

ingredients of offence punishable under Section 324 of the Indian Penal Code and other Sections are non cognizable in nature. The First Information Report is the result of concoction and previous disputes. Perusal of injury certificate issued by Sub District Hospital, Omerga would show that when the informant was examined, there was only one injury i.e. Contused Lacerated Wound, 2 x 2 x 0.2 cms. approximately in size on right arm, probable weapon is hard and blunt object and nature of injury is stated to be simple. Injury Certificate of one Laxman Mane would also show that he had one injury i.e. Contused Lacerated Wound, 4 x 2 x 0.2 cms. approximately in size on left forearm with hard and blunt object and it was simple injury. As per the First Information Report, the informant, who is daughter-in-law of applicant Nos.3 and 4 and sister-in-law of applicant No.1 and co-sister of applicant No.2, was demanding her share and had also lodged suit for partition in land, house and brick kiln. She states that on 26.04.2020 around 6.00 p.m. she found that applicants were preparing road by means of JCB for transporting bricks from the brick kiln. She told the applicants that they should not transport the bricks till the decision by the Court. However, all the accused persons asked her, as to who is she to ask them and she was assaulted on that count. Applicant No.2 had taken bite of her right hand, causing injury to her. When her brother Laxman Mane had tried to rescue her, applicant Nos.1 and 3 had assaulted him by giving kicks and fists. Applicant No.1 had taken bite of left

hand of Laxman. Human teeth cannot be said to be a weapon is described in Section 324 of the Indian Penal Code. He relies on the decision in **Shakeel Ahmed vs. State of Delhi** [(2004) 10 SCC 103], wherein it is held in respect of Section 326 of the Indian Penal Code that -

“Teeth of human being cannot be considered as deadly weapon as per the description of deadly weapon enumerated under Section 326 of the Indian Penal Code. Hence, the offence cannot escalate to Section 326 of the Indian Penal Code. It can best remain only at Section 325 of the Indian Penal Code.”

3.1 He also relies on the decision of the Single Bench of Hon'ble Karnataka High Court, Dharwad Bench in **Lakshmana Reddy Yane Lakshmi Reddy s/o Gadilingappa and another vs. The State of Karnataka** in Criminal Revision Petition No.100181 of 2014 decided on 20.07.2023, wherein **Shakeel Shmed** (supra) was relied and, therefore, when the nature of the injury as per the medical report is simple in nature, but human teeth cannot be considered as the weapon of shooting, stabbing, cutting etc., then the ingredients of Section 324 of the Indian Penal Code are not at all attracted. The other Sections being non cognizable in nature, matter cannot proceed.

4 Per contra, learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submit that the human teeth have been used as weapon in the present matter and it would be upon

the explanation by the Medical Officer. It would be decided as to whether it is an instrument of shooting, stabbing, cutting etc. or not. Let there be evidence. Learned Advocate for respondent No.2 submits that applicants are unnecessarily resisting and not giving the share of her deceased husband and thereby harassing her and thereby she is required to suffer. Respondent No.2 also relies on the decision in Special Civil Suit No.11/2018 dated 13.08.2024, whereby that suit came to be decreed. It was declared that respondent No.2 is the widow of deceased Shivaji, who is the son of applicant Nos.3 and 4 and plaintiff No.1 therein is her daughter and they have 1/4th share in the suit property. Applicant No.1, who is Advocate by profession, has lodged First Information Report on 28.04.2020 vide Crime No.140/2020 with the same Police Station, for the offence punishable under Sections 143, 147, 149, 323, 324, 34, 504, 506 of the Indian Penal Code regarding incident at 6.00 p.m. on 26.04.2020. This shows that incident had happened on that day and, therefore, let there be trial.

5 In the normal course, when there are cross cases, this Court would be slow in interfering in respect of one matter only, however, we are also required to consider as to whether the ingredients of the offence are forthcoming and whether the evidence supports *prima facie* to the allegations. Certainly, there appears to be property dispute between

applicants and respondent No.2 and there is decree in favour of respondent No.2. Enmity or disputes are in fact, double edged weapons, which may cut both of them.

6 We would like to go by contents of First Information Report, statements of witnesses and other documents in order to consider as to whether the offence under Section 324 of the Indian Penal Code has been made out or not. The other offences i.e. Sections 323, 504, 506 read with Section 34 of the Indian Penal Code are non cognizable in nature and in that event First Information Report under Section 154 of the Code of Criminal Procedure will not be maintainable. First Information Report and statements of witnesses, especially the injured, would also show that when informant had allegedly requested applicants not to transport bricks from the brick kiln till the decision of the case, she states that she was assaulted. She levels allegation against applicant No.1 that he took bite (i.e. by using his teeth as weapon) to the left forearm of her brother Laxman and she also states that applicant No.2 had taken bite of her right hand. That means, she has levelled allegation that applicant Nos.1 and 2 both have used teeth as weapon. As per the ingredients of Section 324 of the Indian Penal Code, the hurt should be by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by

means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood etc. As aforesaid, the medical certificates of informant and her brother show that there was simple hurt to both of them. Now, the weapon that is used is stated to be hard and blunt object. The teeth marks were not noted by the Medical Officer and he has given the description of injury as Contused Lacerated Wound. The dimensions given cannot match with the injury that might be caused by human teeth. The natural curve in case of bite is not noted. Therefore, it is hard to believe that injuries which were noted on the person of informant and her brother would have been caused by human teeth. Hon'ble Supreme Court in **Shakeel Ahmed** (supra) while considering the offence under Section 326 of the Indian Penal Code observed that teeth of human being cannot be considered as deadly weapon as per the description of deadly weapon enumerated under Section 326 of the Indian Penal Code. If we consider Section 326 of the Indian Penal Code, then as compared to Section 324 of the Indian Penal Code, there is only the difference of word 'hurt' and 'grievous hurt' in the respective sections and then the change in the sentence. Therefore, the observations in **Shakeel Ahmed** (supra) are applicable to the case under Section 324 of the Indian Penal Code also. In **Shakeel Ahmed**

(supra) injury was grievous as the phalanx of index finger was snipped off and, therefore, it was considered under Section 325 of the Indian Penal Code. If we apply the same rule, then the injury would come down to Section 323 of the Indian Penal Code, which is non cognizable in nature. Therefore, with this evidence, though there appears to be a cross case; yet, it would be an abuse of process of law to ask the applicants to face the trial, as the ingredients of offence under Section 324 of the Indian Penal Code are not attracted for the aforesaid reasons. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Regular Criminal Case No.163/2020 pending before learned Judicial Magistrate First Class, Omerga, Dist. Osmanabad arising out of First Information Report vide Crime No.132/2020 dated 26.04.2020 registered with Police Station, Omerga, Dist. Osmanabad/Dharashiv, for the offence punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicants viz. 1) **Tanaji Shivaji Solankar**, 2) **Vanmala w/o Tanaji Solankar**, 3) **Shivaji Maruti Solankar** and 4) **Prabhawati w/o Shivaji Solankar**.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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