

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 302 OF 2015

PIRSAHEB LADLESO SHAIKH & ORS.
VERSUS
STATE OF MAHARASHTRA & ANR.

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Advocate for Applicant : Mr. Narvade Patil Ravindra B.
APP for Respondent/State : Mrs. S.G. Chincholkar
Advocate for Respondent no.2 : Mr. Biradar R.D.

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CORAM : S.S. SHINDE & A.M. BADAR, JJ.

Dated: March 02, 2015

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PER COURT :-

This application is filed with the following
prayer:-

“That, the impugned Criminal Case bearing R.C.C. no. 539/2014 registered against the applicants pursuant to charge sheet bearing No. 86/2014 dated 22.08.2014 and F.I.R. bearing Crime No. 81/2014 dated 29.04.2014 pending before the Ld. C.J.M. at Latur, for the offences punishable u/s. 498(A), 323, 504, 506(II) r/w 34 of I.P.C. be quashed and set aside in the interest of justice as against the present applicants.”

2. This application was filed by five applicants. However, the learned counsel appearing for the applicants

on 28th January, 2015 sought liberty to withdraw the application of applicant nos. 1 to 4 and accordingly, their application is dismissed as withdrawn. Therefore, adjudication of this application is confined to only applicant no.5 Shabnaji Riyaj Mulla.

3. The learned counsel appearing for the applicants invited our attention to the allegations in the First Information Report and other material placed on record and submits that, even if, the allegations in the First Information Report are taken in its entirety, no offence is disclosed. So far, applicant no.5 is concerned, it is submitted that, the applicant is not residing at Hamangaon, Dist. Solapur, however, the applicant is residing far away from the said place. It is further submitted that, the statements of other witnesses are hear-say and cannot be taken into consideration. Therefore, the learned counsel appearing for the applicants submits that, the Application may be allowed.

4. On the other hand, the learned counsel appearing for the original complainant relying upon the

allegations in the First Information Report and other material collected during the investigation submits that, the allegations in the First Information Report will have to be taken as it is there are allegations against the applicant and there is enough material to prosecute the applicant. Therefore, the learned Counsel appearing for the original complainant submits that, the application may be rejected.

5. We have carefully considered the submissions advanced by the learned counsel appearing for the applicants, the learned Additional Public Prosecutor for the State and the learned counsel appearing for the Respondent - original complainant.

6. Upon careful consideration of the allegations made in the First Information Report, there are no specific allegations against the present applicant, in as much as, no particulars are given how much amount the applicant demanded, what type of cruelty or torture has been given by the applicant to the complainant. There are general allegations. If the allegations in the First Information Report are taken at its face value and considered in its entirety, so

far the present applicant is concerned, no offence is disclosed. Admittedly the applicant is sister of husband and not residing in matrimonial house for couple of years before the date of incident. Therefore, keeping in view the parameters laid down by the Supreme Court in the case of "*State of Haryana V/s Bhajanlal*¹", the case in hand is covered under clauses 1 and 5.

7. In that view of the matter, further continuation of the proceedings based on Criminal Case bearing R.C.C. no. 539/2014 registered against the applicant no.5 pursuant to charge sheet bearing No. 86/2014 dated 22.08.2014 and F.I.R. bearing Crime No. 81/2014 dated 29.04.2014 pending before the Ld. C.J.M. at Latur, for the offences punishable u/s. 498(A), 323, 504, 506(II) r/w 34 of I.P.C., will be an exercise in futility.

8. Hence, following order:

ORDER

(i) Criminal Case bearing R.C.C. no. 539/2014 registered against the applicant no.5 Shabnaji Riyaj Mulla pursuant to charge sheet bearing No. 86/2014

¹AIR 1992 SC 604

dated 22.08.2014 and F.I.R. bearing Crime No. 81/2014 dated 29.04.2014 pending before the Ld. C.J.M. at Latur, for the offences punishable u/s. 498(A), 323, 504, 506(II) r/w 34 of I.P.C. is quashed and set aside;

(ii) We make it clear that, so far other accused are concerned, the trial Court is free to proceed against them.

(iii) Rule is made absolute in the above terms.

(**A.M. BADAR, J.**)

(**S.S. SHINDE, J.**)

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sga/-