

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 671 OF 2015

- 1] Karbhari S/o Baba Vitkar,
Age : 65 Years, Occu. Agril.,
R/o Malegaon, Tq. Barshi,
Dist. Solapur.
- 2] Janabai W/o Karbhari Vitkar,
Age : 60 Years, Occu. Household,
R/o Malegaon, Tq. Barshi,
Dist. Solapur.

... APPLICANTS

VERSUS

- 1] The State of Maharashtra,
Through : The Police Inspector,
Nilanga Police Station, Nilanga,
Tq. Nilanga, Dist. Latur.
- 2] Mangal W/o Balaji Jadhav,
Age : 65 Years, Occu. Household,
R/o Vidya Nagar, Nilanga,
Tq. Nilanga, Dist. Latur.

... RESPONDENTS

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Advocate for Applicants : Mr. Hange Rajendra C.
APP for Respondent/State : Mr. S.D. Kaldate.

CORAM : S.S. SHINDE & A.M. BADAR, JJ.
DATE : 9th MARCH, 2015.

PER COURT:

- 1] Heard.
- 2] Rule. Rule made returnable forthwith. With consent of parties,
heard finally.

3] By this petition, the petitioner is seeking the following relief :-

“{B} The charge-sheet in Sessions Case No. 47 of 2013 pending on the file of Additional Sessions Judge, Nilanga, District Latur pursuant to Crime No.46 of 2013 registered with Nilanga Police Station, District Latur, for the offence punishable under Section 363, 366 and 376 read with section 34 of the Indian Penal Code, may kindly be quashed and set aside.”

4] It is the case of the applicant that complainant Mangal Balaji Jadhav, in her complaint alleged that one Shankar Karbhari Vitkar, in furtherance of common intention of the applicants enticed her daughter by giving allurements of marriage and she was taken in one white coloured Indica Car. Upon receiving said report, Police registered FIR bearing No. 46 of 2012, for the offence punishable under Sections 363, 366 r/w 34 of IPC and Section 376. After completion of investigation, charge sheet came to be filed. Case is registered as RCC No. 160 of 2013.

5] It is the contention of the counsel for the applicants that if the statement of victim is read in its entirety, there are no allegations against the present applicants. It is submitted that in the entire charge sheet also, there is absolutely no iota of evidence which will call for any criminal prosecution against the applicants. Therefore, the counsel for applicants submits that the application deserves to be allowed.

6] Learned APP for the State invited our attention to the allegations in the FIR and submits that name of the applicants is mentioned in the FIR. However, he fairly concedes that there is no mention of the names of the applicants and also no overt act is attributed to them in the statement of the victim recorded on 13.7.2013. Therefore, learned APP submits that this court may pass appropriate orders.

7] We have given careful consideration to the rival submissions. With the able assistance of the counsel for parties, perused the grounds taken in the application and annexures thereto, the charge sheet and also its accompaniments. It appears that on suspicion, names of the applicants were mentioned in the initial complaint which was filed by the mother of the victim. However, upon careful perusal of the statement of the victim which is recorded on 13.7.2013, neither names of the applicants are mentioned nor any overt act is attributed to them.

8] This court has already allowed the application filed by the co-accused and quashed the proceedings since there was no overt act attributed to that co-accused. In that view of the matter, case of the applicants would fall in following parameters laid down by the Supreme Court in the case of **"State of Haryana V/s Bhajanlal" {AIR 1992 SC 604}** wherein it is held that, in following categories the Court would be able to quash the F.I.R. : -

1. Whether the allegations made in the F.I.R. 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 F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code, except under an order of Magistrate within the purview of Section 155(2) of the Code;
3. Where the uncontroverted allegations made in the F.I.R. 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 applicant;
4. Where the allegations in the F.I.R. do not constitute a cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
5. Where the allegations made in the F.I.R. 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 provisions in the Code of 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.

9] In the light of the discussion hereinabove, the application is allowed. Rule is made absolute in terms of prayer clause (C) and (D). Petition stands disposed of. However, we make it clear that the relief granted in this application will be confined to the applicants herein only.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-