

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 737 of 2015

1. Nivruti s/o. Tulsidas Chapekhar,
Age : 26 years,
Occupation : Agriculture,
R/o. Vahegaon (Manjri),
Taluka : Gangapur,
District : Aurangabad.
2. Tulsidas s/o. Shridhar Chapekhar,
Age : Major,
Occupation ; Agriculture
and Milk Business,
R/o. Vahegaon (Manjri),
Taluka : Gangapur,
District : Aurangabad.
3. Sow. Radhabai Tulsidas Chapekhar,
Age : Major,
Occupation : Agriculture
And Milk Business,
R/o. as above.
4. Bharat s/o. Tulsidas Chapekhar,
Age : Major,
Occupation : Agriculture
And Milk Business,
R/o. as above.
5. Sow. Dropadabai Tulsidas Chapekhar,
Age : Major,
Occupation : Agriculture
And Milk Business,
R/o. Vahegaon Manjri,
Taluka : Vaijapur,
District : Aurangabad.

6. Sanjay Baburao Londhe,
Age : Major,
Occupation : Agriculture
And Milk Business,
R/o. Ambi, Taluka : Rahuri,
District : Ahmednagar. .. Applicants.

versus

1. Sau. Kavita w/o. Nivruti Chapekhar,
Age : 24 years,
Occupation : Household,
R/o. C/o. Popat Punjaji Mule,
Kolhar Bhagwati,
Taluka : Rahata,
District : Ahmednagar.
2. The State of Maharashtra. .. Respondents.

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Mr. P.N. Sonpethkar, Advocate, for the applicants.

Respondent no.1 served (Absent).

*Mr. K.M. Suryawanshi, Additional Public Prosecutor,
for respondent no.2.*

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

DATE : 19TH AUGUST 2015

ORAL JUDGMENT (Per S.S. Shinde, J.) :

1. Heard Adv. Mr. P.N. Sonpethkar for the applicants, and
learned APP Mr. K.M. Suryawanshi for respondent no.2 - State. None
present for respondent no.1 though served.

2. Rule. Rule made returnable forthwith. By consent, heard finally.

3. There are specific allegations against applicant nos.1 to 5 (original accused nos.1 to 5) mentioned in the FIR. In the FIR, incident dated 28th October 2014, is mentioned. In that view of the matter, at this stage, no case is made out to entertain the application, so far as applicant nos.1 to 5 (original accused nos.1 to 5) are concerned. Hence, application of respondent nos.1 to 5 (original accused nos.1 to 5) is rejected.

4. So far allegations against respondent no.6 (original accused no.6), namely, Sanjay Baburao Londhe, in the FIR are considered in its entirety, there is no overt act attributed to him. In para 5 of the complaint which was filed before the Magistrate, it is stated that the accused nos.1 to 5 were actually involved in the incident dated 28th October 2014 and applicant no.6 instigated for such commission of offence.

5. The learned Additional Public Prosecutor appearing for the State invited our attention to the supplementary statement of the complainant and submits, that in supplementary statement, complainant has stated that all the accused were involved in commission of offence on 28th October 2014, and to that effect, even the witnesses have stated so.

6. Upon careful perusal of para 5 of the complaint, presence of accused no.6 is not stated by the complainant. In supplementary statement of the complainant, there is substantial improvement which cannot be accepted. If the allegations in para 5 of the complaint are taken as it is, at

the most, allegation against respondent no.6 is that he instigated other accused for commission of the offence. However, presence of accused no.6 is not stated by the complainant. Apart from it, it appears that accused no.6 is resident of village Belapur, which is different place than resident of accused nos.1 to 5.

7. Therefore, in the light of test laid down by the Hon'ble Supreme Court, in the case of *State of Haryana and others Vs. Ch. Bhajan Lal and others*, reported in *AIR 1992 Supreme Court 604*, for exercise of extraordinary power under Article 226 of the Constitution or inherent powers under Section 482 of the Code of Criminal Procedure, 1973, the case in hand, to the extent of respondent no.6, fits in Category Nos.1 and 5, which read thus :

{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.

{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.”

8. In the result, the Application is partly allowed.

[A] As observed above, the application of applicant nos.1 to 5 (original accused nos.1 to 5) stands rejected.

[B] The application, so far as respondent no.6 (original accused no.6), namely, Sanjay s/o. Baburao Londhe, is concerned, same stands allowed. The order dated 12th January 2015, passed by the Judicial Magistrate (F.C.), Rahata [District : Ahmednagar], in Case No. 580/2014, directing investigation under Section 156(3) of the Code of Criminal Procedure, 1973, and FIR registered in pursuance thereof vide Crime No. I-10/15, at Police Station, Loni [Taluka : Rahata, District : Ahmednagar], for offence punishable under Sections 498A, 323, 504, 506, read with Section 34 of the Indian Penal Code, **to the extent of respondent no.6 (original accused no.6), namely, Sanjay s/o. Baburao Londhe**, are quashed and set aside.

[C] It is made clear, that the FIR in Crime No. I-10/15 in respect of remaining accused is not disturbed and investigation thereof shall be made in accordance with law.

9. Rule made absolute in the above terms.

(A.M. BADAR)
JUDGE

(S.S. SHINDE)
JUDGE

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