

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

CRIMINAL APPLICATION NO. 3958 OF 2015

Mr. Chetan Anil Mehta and ors.

...Applicants

VERSUS

The State of Maharashtra & anr.

...Respondents

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Shri Joydeep Chatterjee, advocate h/f
Shri A.A.Yadkikar, advocate for applicants
Shri K.S.Patil, A.P.P. for respondent no.1/State
Shri N.B.Suryawanshi, advocate for respondent no.2
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CORAM : A.B.CHAUDHARI & INDIRA K.JAIN, JJ.
DATED : 15th SEPTEMBER, 2015

ORDER :

- 1] Heard learned counsel for the rival parties at length.
- 2] Learned A.P.P. for the State makes a submission that charge sheets have been filed in these cases after investigation. He submits that, in addition to the report of the complainant, during investigation, statements of three eye witnesses, namely (1) Shobha Choudhary, (2) Ganesh Sonawane, and (3) Joti Shinde have been recorded, which also indict the applicants. According to him, there are counter reports filed by rival parties in respect of the offences registered with the concerned police station and charge sheets have already been filed.
- 3] Learned counsel for the applicants submitted that, reading the F.I.R. and the counter F.I.R., clearly show that, the allegations are loaded with mala fides and ill-intention and in order to give counter blast to the F.I.R. lodged earlier by applicant no.1, further

F.I.R. is lodged, and therefore, the said allegations are obviously false. He submits that the complainant in the instant case has been set up by the rival group for lodging the F.I.R. He then submitted that bare reading of the allegations in the F.I.R. show that they are highly improbable and impossible, and therefore, the parameters laid down in the case of **State of Haryana vs Bhajanlal [AIR 1992 SC 604]** must be applied and the applicants are, therefore, entitled to the relief claimed. In the alternative, he submitted that the applicants are entitled to the relief looking to the allegations in the F.I.R. taken at their face value.

4] Per contra, learned counsel for the complainant as well as the learned A.P.P. opposed the application.

5] We have considered the submissions made by the learned counsel for the applicants keeping in mind the ratio in the case of **Bhajanlal** (supra). We have carefully perused the allegations made in the F.I.R. It is true that the first F.I.R. was lodged by applicant no.1 about manhandling in a meeting that was attended by the M.L.A. and others. It is also true that the F.I.R. was lodged by complainant Manisha on the same date but thereafter. We have perused the said F.I.R.

6] Looking to the allegations in the F.I.R. and statements of the eye witnesses, about which reference has been made by the learned A.P.P. we are unable to come to any conclusion as to whether the applicants are right or the complainant is right in their contentions in the instant case. What we mean is, we are unable to return a finding that the allegations made by the applicants are correct and that the respondent/complainant are not correct. In other words, all these are the matters of investigation and appreciation of

evidence, which we are unable to do in the present jurisdiction under Section 482 of the Code of Criminal Procedure. In that view of the matter, we think the only remedy available to the applicants is to apply for discharge before the learned trial Judge. Hence, we are of the opinion that since the charge sheets are filed and criminal cases are registered, it would be appropriate to file application for discharge, if so advised, before the learned trial Judge.

7] In the result, we pass following order.

- (i) Criminal Application is not entertained and is rejected.
- (ii) Liberty is reserved in favour of the applicants to apply for discharge before the learned trial Judge.
- (iii) If application for discharge is filed by the applicants, the same shall be considered and decided, in any case, within a period of three months from the the next date of appearance before the trial court after hearing all the concerned parties.
- (iv) Interim protection is extended by another four weeks.

[INDIRA K.JAIN, J.]

[A.B.CHAUDHARI, J.]