

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2528 OF 2015
WITH APPLN/4473/2015 IN APPLN/2528/2015

ANAND S/O RAJENDRA GADEKAR & OTHERS
VERSUS
THE STATE OF MAHARASHTRA & ANOTHER

...

Advocate for Applicants : Mr. P. S. Chavan.
APP for Respondent/State : Mr. A. V. Deshmukh.
Advocate for Respondent No.2 : Mr. B. A. Dhengale

CORAM : S.S. SHINDE & A.M. BADAR, JJ.
DATE : 27th AUGUST, 2015.

PER COURT:

1] Heard.

2] Criminal Application No. 4473 of 2015 is allowed for the reasons stated therein and disposed of.

3] Heard learned counsel for the applicant and learned APP for respondent No.2. We have carefully perused the material placed on record and in particular, allegations in the FIR. So far as applicant Nos. 1 to 5 are concerned, there are allegations which needs to be investigated and hence, their application stands rejected.

4] So far as applicant No.6 is concerned, upon perusal of the allegations in the FIR, there are no specific allegations. Even she is not referred by name. Her age is 73 years and she is residing at Barshi, which is a different place than the matrimonial place of the complaint. The Supreme Court in the case of "*State of Haryana V/s Bhajanlal*" {AIR 1992 SC 604} 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.

Therefore, in the light of the categories laid down in the case of “ Bhajanlal Vs. State of Haryana” (supra) and more particularly, categories 1 and 5, the application, so far as applicant No.6 is concerned, deserves to be allowed. Accordingly, the application is partly allowed. Charge sheet is

already filed. Further proceedings based upon Crime No.88 of 2015 registered with City Police Station, Osmanabad, under Sections 498A, 323, 504, 506 r/w. 34 of IPC, the Charge sheet No. 128 of 2015 and the resultant case RCC No. 291 of 2015, qua applicant No.6 - Chhabubai w/o. Suryakant Gadekar, stands quashed and set aside.

5] It is made clear that observations made in this order are prima facie in nature and the trial court shall not get influenced by the said observations while conducting trial. Criminal application stands disposed of accordingly.

[A.M. BADAR]
JUDGE

grt/-

[S.S. SHINDE]
JUDGE.