

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPLICATION NO. 6546 OF 2014**

SAYYED AMIR S/O SAYYED MUSA AND OTHERS
VERSUS
AFREENJAHAN W/O SAYYED AMEER AND ANOTHER

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Advocate for Applicants : Ms. Pathan Tahiwarekhan
Wajeedkhan

APP for Respondent/State : Mr. V.D. Godbharale
Advocate for Respondent no.2 : Mr. Lomte Arun S.

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CORAM : S.S. SHINDE & A. I. S. CHEEMA, JJ.

Dated: July 02, 2015

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PER COURT :-

Rule. Rule made returnable forthwith and heard finally by consent of the learned counsel appearing for the parties.

2. Already the application so far as it relates to applicant nos. 1, 2, 3, 6 and 7 is rejected by this Court on 12th January, 2015, leaving them open the remedy of filing application for discharge.

3. This application takes exception to the charge-sheet/proceeding arising out of F.I.R. No. 120 of 2014 registered with Police Station, Jintur, Dist. Parbhani for the offence punishable under Sections 498-A, 323, 504, 506 r/w section 34 of I.P. Code.

4. The learned counsel appearing for the applicants invited our attention to the allegations in the First Information Report and also the charge-sheet and its accompaniments and submits that, even if the allegations in the First Information report are taken at its face value and considered in its entirety accompanied with accompaniments of the charge-sheet, no offence is disclosed against applicant nos. 4 and 5. It is further submitted that, the further proceedings based on the material collected by the prosecution agency against applicant no.4 Nasreen W/o Sallauddin and applicant no.5 Sallauddin Wazeer will be abuse of process of Court and exercise in futility. Therefore, relying upon the judgment of the Supreme Court in the case of *State of Haryana V/s Bhajanlal*,¹ the learned counsel appearing for the applicants submits that, the Criminal Application may be allowed.

5. The learned counsel appearing for Respondent No.2 i.e. original complainant relying upon the allegations in the First Information Report, charge-sheet and accompaniments of the charge-sheet submits that, the applicant no.4 and applicant no.5 were present when there was demand of Rs. 3 Lakhs by the other applicants. It is submitted that, the allegations in the First Information Report will have to be taken as it is and will have to be tested during trial. The learned counsel appearing for the Respondent No.2, therefore, submits that, the application may be dismissed.

¹AIR 1992 SC 604

6. We have given careful consideration to the submissions advanced by the learned counsel appearing for the applicants, the learned counsel appearing for the Respondent No.2 and the learned Additional Government Pleader appearing for the Respondent/State. Upon careful perusal of the allegations in the First Information Report and also the statements of the witnesses recorded by the concerned Investigating Officer, there are no specific overt acts attributed to applicant nos. 4 and 5. Neither there is any specific statement/allegations against the applicant nos. 4 and 5. The applicant no.4 is sister of applicant no.1. She is married and applicant no.5 is her husband. They are residing at village Balapur, Tq. Kalamnuri, Dist. Hingoli. The fact that they are residing at different place would rule out their involvement from the alleged commission of offence, and more so, when there are no specific allegations against them in the First Information Report or the statements of the witnesses recorded by the Investigating Officer. In that view of the matter, in our opinion, even if the allegations in the First Information Report and the statements of the witnesses are considered in its entirety, no offence is disclosed against the applicant nos. 4 and 5.

7. In that view of the matter, keeping in view the test laid down in the case of **Bhajanlal**, we are inclined to allow this application in respect of applicant nos. 4 and 5. Accordingly, Rule is made absolute in terms of prayer clause 'B', as regards applicant nos. 4 and 5.

8. We make it clear that, the relief granted today is restricted only to the applicant no. 4 – Nasreen W/o Sallauddin and applicant no.5 – Sallauddin S/o Wzeer.

9. The application is disposed of in above terms.

(**A. I. S. CHEEMA, J.**)

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

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sga/-