

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION NO.181 OF 2014

(Husna Afroz Rashid Khan and others vs. State of Maharashtra and another)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Mr. U.J. Deshpande, Advocate for applicants.

Mrs. S.S. Jachak, Additional Public Prosecutor for
respondent no.1.

Ms. J.P. Junghare, Advocate h/f Shri M. Badar,
Advocate for respondent no.2.

CORAM : A.B. CHAUDHARI AND
 P.N. DESHMUKH, JJ.

DATED : MARCH 24, 2015

Heard learned Counsel for the parties.

Shri Deshpande, learned Counsel for the
applicants, vehemently contended that the situation
in the instant case has improved since respondent
no.2 has given admission in other case, which results
into a favourable circumstance for issuance of rule in
the instant case in the first place and secondly, for
quashing of first information report. He further

argued that husband of respondent no.2 is living in Saudi Arabia for employment while other applicants are residing at Akola and all relatives have been roped in by respondent no.2. He further submitted that Supreme Court has deprecated the practice of roping of all the relatives of husband in the cases like the one in hand and, therefore, this Court must interfere by exercising its jurisdiction under Section 482 of Code of Criminal Procedure.

Per contra, learned Additional Public Prosecutor for respondent no.1 and learned Counsel for respondent no.2 opposed the criminal application by submitting that since there is no stay of investigation, investigation must be going on. They further submitted that unless investigation is completed and charge-sheet is filed, it is not possible even for this Court to pre-judge the issue.

Upon hearing learned Counsel for the rival parties, we find that investigation is not yet completed nor charge-sheet has been filed in respect of first information report that was filed last year. We think, as observed by the Apex Court, killing a still born child is not fair qua the investigation. It is

only after completion of investigation, the Court will know truth of the matter – whether applicants are right or respondent no.2 is right. That apart, we are not in a position to appreciate and decide whether husband of respondent no.2 has no role to play so also his relatives in respect of the first information report for which investigation is being conducted. We, therefore, think that the applicants should be relegated to the alternate remedy after filing of the charge-sheet, namely, to apply for discharge under Section 227 of the Code of Criminal Procedure before trial Court. That being so, we make the following order :

Order

Criminal Application No.181/2014 is disposed of reserving liberty in favour of applicants to apply for discharge before trial Court after charge-sheet is filed. Liberty to prosecution to file charge-sheet is granted.

If application for discharge is filed by the applicants, the same shall be taken up expeditiously for hearing and disposal by the trial Court. The trial Judge shall sympathetically consider the application

for exemption from personal appearance, if any, made by the applicants.

All the points raised in Criminal Application No.181/2014 as well as Criminal Application No.342/2015 for amendment are kept open.

JUDGE

JUDGE

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