

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

CRIMINAL APPLICATION NO. 1303 OF 2015

1. Aashabai W/o Gangadhar Darade,
Age: 60 years, Occu: Household,
residing at Borda, Tq. Gangakhed,
Dist. Parbhani.
 2. Krushna S/o Gangadhar Darade,
Age: 25 years, Occu.: Education.,
R/o : Pimpri Chinchwad College of
Engineering Nigdi, Pune.
 3. Madhav S/o Dashrath Chate,
Age: 35 years, Occu: Agri.,
 4. Indubai W/o Madhav Chate,
Age: 30 years, Occu: Agri.,
- Both 3 & 4 R/o Survey No. 18/1,
Choudhari park, colony No. 1,
Plot No. 16 Digi Camp Pune,
5. Angat S/o Virbha Munde,
Age :50 years, Occu: Agri.,
R/o : Near Datta Mandir, Gangakhed,
Tq. Gangakhed, Dist. Parbhani.

...APPLICANTS

versus

1. The State of Maharashtra,
Through Investigation Officer,
Police Station, Pimpaldari,
Tq. Gangakhed, Dist. Parbhani.
2. Saw. Laxmibai W/o Hanumant Darade,
Age: 28 years, Occu: Household.,
R/o Wagdara, Tq. Gangakhed,
Dist. Parbhani.

...RESPONDENTS

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Mr. M.B. Sandashiv, Advocate for applicants
Mr. D.R. Kale, APP for Respondent No. 1 – State
Mr. S.J. Salunke, Advocate for respondent No. 2

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**CORAM : S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATED : 9th DECEMBER, 2016.

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

1. Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel appearing for the parties.

2. This application is filed under section 482 of the Code of Criminal Procedure, with following prayer;

“B. The F.I.R. bearing Crime No. 27/2014, dated 29/03/2014 punishable U/s. 498(A), 323 read with section 34 of IPC registered with Pimpaldari Police Station Tq. Gangakhed, Dist. Parbhani, upon which RCC No. 208/2014, pending before Ld. J.M.F.C. Gangakhed, Dist. Parbhani, may kindly be quashed and set aside.”

3. Learned counsel appearing for the applicants invites our attention to the allegations in the first information report (for short "FIR") and also to statements of the witnesses and submits that there is no specific incident stated in the FIR. There is no any specific date or time on which there was alleged ill-treatment at the hands of applicants. He further submits that applicant No. 1 is residing at Borda, Tq. Gangakhed, District Parbhani, applicant No. 2 is prosecuting his studies for Engineering Course in Pimpri Chinchwad College of Engineering, Nigdi, Pune, applicant No. 3 is husband of applicant No. 4 - Indubai, who is sister of the husband of the informant. Her marriage was solemnized with respondent No. 3 - Madhav before twelve years of lodging FIR. After marriage, couple resided at different places.

4. In support of his aforesaid contention, learned counsel appearing for applicants invites our attention to the photo copies of Adhar Cards

issued in the name of applicants No. 2 to 4. He further submits that applicant No. 5 is maternal uncle of the husband of the informant, and he is residing at Gangakhed. He further submits that, even if allegations in the FIR are taken at its face value and read in its entirety, an ingredients of the alleged offences are not attracted. He further submits that allegations in the statements of witnesses are general in nature. There are no any specific incident quoted in the FIR and also in the statements of witnesses. He further submits that further proceedings based upon the charge-sheet arising out of Crime No. 27 of 2014, dated 29-03-2014 registered with Pimpaldari Police Station Tq. Gangakhed, Dist. Parbhani, for the offence punishable under sections 498(A) and 323 read with section 34 of Indian Penal Code (for short "IPC") qua applicants would be exercise in futility, abuse of process of law and ultimately wastage of valuable time of the court and prosecution agency.

5. On the other hand, learned APP appearing for respondent No. 1 - State and learned counsel appearing for respondent No. 2 invited our attention to the allegations in the FIR, the statements of the witnesses and submitted that the applicants are resided at Alandi where the respondent No. 2-informant and her husband resided till she withdraw herself from the company of her husband. It is submitted that allegations as they appearing in FIR and the statements of witnesses will have to be taken as it is and can be tested only during the course of trial. They further submit that application for quashing the proceedings based upon the charge-sheet arising out of Crime No. 27

of 2014, dated 29-03-2014 registered with Pimpaldari Police Station Tq. Gangakhed, Dist. Parbhani, may not be entertained.

6. We have given anxious consideration to the rival submissions, with the able assistance of the learned counsel appearing for the parties. We have carefully perused the allegations in the FIR, statements of witnesses and the copies of the documents including photo copies of Adhar Cards placed on record by the applicants. Upon careful perusal of allegations in the FIR and statements of witnesses it appears that respondent No. 2 – informant got married with Hanumant Gangadhar Darade in the year 2006. According to informant, after the marriage, her husband- Hanumant Darade and present applicants ill-treated her, however, no specific incident, date or overt act has been mentioned in the FIR. There is no any specific overt act attributed qua each of the applicants. It further appears that out of the wedlock, respondent No. 2-informant is blessed with two children.

7. So far as present applicants are concerned, some of them are not residing at Alandi. Applicant No. 2 is prosecuting his study for Engineering Course in Pimpri Chinchwad College of Engineer, Nigdi, Pune, applicant No. 5 is maternal uncle of husband of respondent No. 2 – informant, namely, Angat Virbha Munde, who is residing at Gangakhed.

8. Upon going through the allegations in the FIR, we do understand that there are specific allegations against husband, however, he is not applicant in the present proceedings. It appears that informant left the

house of her husband at Alandi in the year 2014. If allegations in the FIR and the statements of witnesses are read conjointly and considered in its entirety, in our considered view ingredients of alleged offences have not been disclosed or attracted. Once we arrived to such conclusion, the trial on the basis of allegations in the FIR and the statements of witnesses would be an exercise in futility in as much as there are no specific allegations or overt act attributed to the applicants and there is no sufficient material to proceed with trial.

9. The Supreme Court in the case of *Geeta Mehrotra and another Vs. State of Uttar Pradesh and another* reported in (2012) 10 Supreme Court Cases 741 and *Preeti Gupta and another Vs. State of Jharkhand and another* reported in (2010) 7 Supreme Court Cases 667, after considering the similar fact situation has ruled that tendency of roping the distant relatives in FIR by making vague allegations is growing and ultimately allowed prayer for quashing the FIR/proceeding.

10. In light of discussion in foregoing paragraph, in the peculiar facts and circumstances of this case and keeping in view an exposition of law in the case of ***State of Harayana Vs. Bhajanlal*** reported in ***AIR 1992 SC 604***, we are of the opinion that application deserves to be allowed. Accordingly, application is allowed in terms of prayer clause "B".

11. Rule is made absolute accordingly.

Sd/-
[K. K. SONAWANE, J.]

Sd/-
[S.S. SHINDE, J.]