

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

928 CRIMINAL APPLICATION NO. 2863 OF 2015

SMT. ANURADHA VIJAYKUMAR SURYAWANSHI & ORS
VERSUS
THE STATE OF MAHARASHTRA & ANR

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Advocate for Applicant : Mr. Bhagwat A. Shinde
APP for Respondents: Mr. A. A. Jagatkar
Advocate for Respondent 2 : Mr. V. M. Humbe

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CORAM : S.S. SHINDE &
K.K. SONAWANE, JJ.

DATE : 25TH NOVEMBER, 2016.

PER COURT:

Heard learned counsel for the applicants. He submits that the applicant Nos. 1 and 2 are married sisters of husband Ajit Arvind Mane. The applicant No.3 is the unmarried sister and applicant Nos. 4 and 5 are husband of applicants Nos. 1 and 2, respectively. He submits that there are general allegations in the FIR and also in the statement of the witnesses. There is no specific overt act or role attributed qua each of the applicants. He further submits that no specific instances or dates have been mentioned in the FIR so also in the statements of the witnesses. There are omnibus allegations against the applicants.

2] According to learned counsel for the applicants, there is a tendency to rope in the relatives in matrimonial disputes without their role in actual commission of any alleged offence. He further submits that in case

there are omnibus allegations and the specific dates and instances are not mentioned, in that case, the the FIR and the charge sheet needs to be quashed qua the applicants. He submits that the Supreme Court in the matter of *Geeta Mehrotra and another Vs. State of UP and another reported in 2012(10) SCC 741* while considering the similar fact situation has taken a view that when there are omnibus allegations without attributing overt act or specific act, in that case, the FIR and charge sheet needs to be quashed by invoking the jurisdiction under Section 482 of the Cr.P.C. by the High Court.

3] On the other hand, learned APP appearing for the State, relying upon the allegation in the complaint/FIR, so also, statements of the witnesses submits that after investigation the Investigating Officer found substance in the allegations and after collecting evidence, has filed charge sheet. The case is triable and, therefore, this Court may not entertain this application for quashing the charge sheet.

4] Learned counsel for the respondent No.2, relying upon the contents of the complaint/FIR, submits that there are allegations against the accused. Even the specific date is mentioned in para.12 of the complaint and instances which have taken place on that date have been mentioned. He submits that the allegations in the FIR, so also, statement of witnesses can be tested only during trial and, therefore, this Court may not entertain the application for quashing the FIR.

5] We have given careful consideration to the submissions of the respective parties. With their able assistance and on perusal of the averments in the application and annexures thereto, the complaint filed by respondent No.2, which was subsequently registered as FIR pursuant to the directions by the Magistrate under Section 156 of Cr.P.C., it is not necessary for us to undertake the exercise of considering the material collected by the prosecution agency, on merits. When there is a prayer for quashing the FIR and charge sheet, this Court has to consider, as to whether sufficient material/evidence has been collected by the Investigating Officer.

6] Upon perusal of the allegations in the FIR and in particular, para. Nos. 8,9 and 12, it cannot be said that there are omnibus allegations against the applicants and no specific date is mentioned. Pursuant to the registration of the FIR, the Investigating Officer has also recorded statements of the witnesses. The statements of the complainant and other prosecution witnesses can be tested only during the trial. Therefore, at the stage of quashing the FIR/charge sheet, the allegations of FIR so also version of the prosecution witnesses collected by way of the depositions of the prosecution witnesses, will have to be tested only during trial.

7] At this stage, the learned counsel for the applicant submits that pursuant to registration of FIR, a decree of divorce is passed by the Competent Court on 21.8.2016 in the proceeding initiated by the husband Ajit Mane, is also an additional ground for quashing the FIR/charge sheet.

In response to the said argument, learned counsel for the respondent No.2, on instructions, submits that respondent No.2 has preferred an appeal against the said decree before the appellate court and same is pending for consideration on merits. Therefore, in our opinion, the said ground can not be considered for quashing the FIR/charge sheet, when the appellate court is seized of the appeal filed by the respondent No.2.

8] Therefore, for the reasons aforesaid, we are not inclined to entertain this application for quashing the FIR/charge sheet. Hence, the application stands rejected.

[K.K.SONAWANE]
JUDGE

grt/-

[S.S. SHINDE]
JUDGE