

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPLICATION NO. 2989 OF 2016**

1. Vishwaradhya S/o Mahaling Swamy
Age : 34 years, Occ : Rudraksha Business,
R/o Near Old Water Tank,
Bhalki.
2. Smt. Nirmala @ Neelamma W/o Mahaling Swamy
Age : 54 years, Occ : Household,
R/o D-35, Bar 77, Jangamwadi Math,
Waranasi 221 001.
3. Mahaling S/o Gurubasayya Swamy
Age : 59 years, Occ : Archak,
R/o D-35, Bar 77, Jangamwadi Math,
Waranasi 221 001.

..APPLICANTS
(Orig. Accused)

VERSUS

1. The State of Maharashtra
Through the Incharge Police
Station Officer, Bhagya Nagar,
Police Station, Nanded
Tq. Biloli, Dist. Nanded.
2. Supriya W/o Vishwaradhya Shastri
Age : 30 years, Occ : Household,
R/o Vedant Nagar, Nanded,
Tq & Dist. Nanded.

...

Advocate for Applicants: Mr. P.R. Katneshwarkar
APP for Respondent/State: Mr. D.R. Kale
Advocate for Respondent No.2 : Mr. S.B.
Ghatol Patil

...

**CORAM : S.S. SHINDE &
SANGITRAO S. PATIL, JJ.**

**RESERVED ON : 22nd August, 2016
PRONOUNCED ON : 8th September, 2016**

...

ORAL JUDGMENT (S.S. SHINDE, J)

1. In a nutshell, background facts for filing the present Criminal Application are as under :-

Respondent no.2 namely, Supriya Shastri married to applicant no.1 Vishwaradhya Shastri in the year 2007 as per Hindu rites and rituals. According to her, at the time of the marriage, 25 tolas of gold was given to the applicants besides utensils. After marriage, applicant nos.1 to 3, who are the husband, mother-in-law and father-in-law respectively of respondent no.2, treated her well for some time. However, thereafter, they demanded some silver articles and car. All of

them started ill-treating her on non-fulfillment of their demands. The Criminal Case filed for the offence punishable under Section 498-A of Indian Penal Code on her report, however, that ended in acquittal of the applicants. According to Respondent No.2, she was driven out along with her son by applicant no.1. She started residing at her parents house at Vedant Nagar at Nanded. Thereafter also she was abused by applicant no.1. On the birthday of her son, the applicants came at Nanded and created nuisance and also threatened her. Therefore, she filed First Information Report at Bhagya Nagar, Police Station on 11.04.2016. Hence, this Criminal Application is filed by the applicants for quashing the F.I.R.

2. The learned counsel appearing for the applicants submits that in the entire FIR, there is no disclosure of any specific

incident, which resulted into commission of the offence punishable under Section 498-A or any other offence under the Indian Penal Code. No date, time of the alleged commission of offence has been mentioned. Even though there is a reference of an alleged incident of 24th November, 2015, the FIR was not filed immediately in the month of November and the same has been filed belatedly after about 5 months i.e. on 11.04.2016. It is submitted that the father and mother of applicant no.1 reside at Waranasi. The father is a pious man and is Archak in Jagatguru Vishwaradhya Sinhasan Math, known as Jangamwadi Math at Kashivishwanath Waranasi. The learned counsel further submits that the allegations in the F.I.R. are vague and general. An omnibus statement containing wild allegations without referring to any specific incident has been made by respondent no.2. He submits that the FIR is lodged with a view to harass the

applicants, which is an abuse of process of law.

3. The learned counsel appearing for the applicants further submits that the allegations made in the F.I.R. against the applicants, even if accepted in their entirety, do not disclose commission of any offence. He further submits that the allegations made in the F.I.R. are absurd and inherently improbable, and therefore, the application deserves to be allowed.

4. On the other hand, the learned A.P.P. appearing for the Respondent/State, relying upon the investigation papers, submits that during the course of investigation, the statement of the respondent no.2 is recorded. The F.I.R. needs further investigation and therefore, this Court may not entertain the application.

5. The learned counsel appearing for Respondent No.2 i.e. the informant, relying upon the contents of the F.I.R. and other documents placed on record, submits that the application deserves to be rejected.

6. We have carefully considered the submissions advanced by the learned counsel appearing for the applicants, the learned A.P.P. appearing for the Respondent/State and the learned counsel appearing for Respondent No.2. With their able assistance, we have perused the averments in the application, annexures thereto and the investigation papers produced by the learned A.P.P.

7. The applicants have placed on record the copy of the judgment and order passed by the Court presided over by the Senior Civil Judge and Judicial Magistrate, First Class,

Bhalki at Exhibit `B'. It appears that even on earlier occasion the report was filed by Respondent No.2 by making almost similar allegations and the said report was quashed by the Court concerned thereby acquitting the present applicants. The said report was filed making allegations against the applicants, which would attract the commission of offences punishable under Sections 323, 498-A, 504, 506 read with Section 34 of the Indian Penal Code.

8. Upon careful perusal of the other documents placed on record by the applicants, it appears that applicant no.1 has filed the Petition under Section 13(1) (i) & (iii) of the Hindu Marriage Act, 1955 on 31st December, 2012, for divorce before the Court of Senior Civil Judge at Bhalki. In the said Petition, the reply is filed by the present Respondent No.2, wherein it is admitted that the parents

of applicant no.1 are ordinarily residing at Varanasi in Uttar Pradesh. The learned counsel appearing for the applicants rightly submitted that the parents of applicant no.1 are residing at Varanashi and the child namely Prathiviraj also is prosecuting his studies at Varanashi. It further appears that the Court of Bhalki has granted custody of the child Prathiviraj to applicant no.1 on 20th May, 2015. The child is in the custody of applicant no.1, therefore, the allegations in the report that the applicants visited the maternal home of the informant for celebrating the birthday of the son, appears to be contrary to the record. It is *prima facie* absurd and inherently improbable. All other allegations in the F.I.R. are repetition of the allegations which were made in the earlier F.I.R., which has already been quashed by the Competent Court at Bhalki.

9. Upon careful perusal of the allegations in the F.I.R., it is seen that there are no specific allegations qua each of the applicants and no specific overt acts are attributed. No specific dates are mentioned in the F.I.R., except that the applicants came on 24th November at the house of the parents of the respondent no.2 and threatened her. Lodging of such F.I.R. belatedly after 4-5 months of such alleged incident also creates serious doubt about truthfulness and genuineness of the allegations in the said F.I.R..

The Supreme Court in the case of ***State of Haryana V/s Bhajanlal***¹ held that in the following circumstances the Court would 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

1 AIR 1992 SC 604

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.

10. Upon considering the allegations in the F.I.R. and documents placed on record, in the light of the investigation papers, the case of the applicants would fall under the aforementioned category Nos. 1, 3 and 5.

11. For the reasons aforesaid, we are of the considered opinion that the continuation of further investigation or proceedings based upon the F.I.R. lodged by respondent no.2 would be abuse of process of law. Hence, the Crime No.89/2016 registered at Bhagya Nagar Police Station, Nanded on the basis of the F.I.R. dated 11.04.2016 lodged by respondent no.2, for the offences punishable under

Sections 498-A, 323, 504, 506 r/w S.34 of the Indian Penal Code is liable to be quashed.

12. The application is allowed and the F.I.R. lodged by respondent no.2 is quashed. The application stands disposed of accordingly. However, we make it clear that the observations made in this judgment are confined only to the adjudication of this application and shall not have bearing on other cases pending, if any.

(SANGITRAO S. PATIL, J.) (S.S. SHINDE, J.)

...

SGA