

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

CRIMINAL APPLICATION NO.3552 OF 2016

1. Shaikh Maulasab S/o Shaikh
Mirasab, Age 70 years,
Occ.Retired Government Servant,
R/o Umri, Tq. Umri, Dist.Nanded.
2. Begumbee W/o Shaikh Maulasab,
Age 65 years, Occ.Household,
R/o Umri, Tq. Umri, Dist.Nanded.
3. Syed Nazeera W/o Syed Babu,
Age 35 years, Occ.Household,
R/o Mozamabad, Tq.Palam,
Dist.Parbhani.
4. Shaikh Imam S/o Sk. Maulasab,
Age 32 years, Occ.Education and
Agri. R/o Umari, at present
Pandurang Nagar, Nanded,Tq.
and District Nanded. ... Applicants.

Versus

1. The State of Maharashtra,
through Palam Police Station,
Tq. Palam, Dist.Parbhani.
2. Asmabegum W/o Shaikh Shadulla,
Age 30 years,Occ.Household,
R/o Mozamabad, Tq. Palam,
At present, Habib Colony, Palam,
Tq.Palam, Dist.Parbhani.
3. Khan Abdul Gani Abdul Rashid,
Age major, Occ.Service as Dy.S.P.
R/o S.P. Office, Purna, Tq.Purna,

Dist.Parbhani.

4. The Superintendent of Police,
S.P.Office, Parbhani.

5. The Inspector General of Police,
I.G. Office, Nanded. ... Respondents.

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Mr.M.V.Ghatge, advocate for the applicants.
Mrs.A.V.Gondhalekar, Addl. Public Prosecutor for
the State.

Mr.S.A.G.Qureshi, advocate for Respondent No.2.

Mr.Bharat Doifode, advocate holding for

Mr.N.L.Jadhav, advocate for Respondent No.3.

**WITH
CRIMINAL APPLICATION NO.4935 OF 2016.**

Asma Begum W/o Shaikh Shadullah,
Age 28 years, Occ.Household,
R/o Mozamabad, Tq. Palam,
Dist.Parbhani. ... Applicant.

Versus

1. The State of Maharashtra,
through Police Station, Palam,
Tq. Palam, Dist.Parbhani.

2. Shaikh Maulasab S/o Shaikh Mirasab,
Age 70 years, Occ.Pensioner,
R/o Umeri, Tq.Umeri, Dist.
Nanded.

3. Begum Bee W/o Shaikh Maulasab,
Age 65 years, Occ.Household,
R/o Umeri, Tq.Umeri, Dist.Nanded.

4.Sayyad Nazira W/o Sayyad Babu,
Age 35 years, Occ.Household,
R/o Mozamabad, Tq. Palam,
Dist.Parbhani.

5. Shaikh Imam S/o Shaikh Maulasab,

Age 32 years, Occ.Education,
R/o Umeri, Tq. Imeri, Dist.
Nanded, at present Pandurang Nagar,
Nanded, Tq. and Dist.Nanded. ... Respondents.

...
Mr.S.A.G.Qureshi, advocate for the applicant.
Mr.M.V.Ghatge, advocate for Respondent Nos.2 to
5.
Mrs.A.V.Gondhalekar, Addl. Public Prosecutor for
the State.

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**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 05.12.2016.

PER COURT :

1. Heard.

2. Mr.Ghatge, learned counsel submits that the complaint filed by the present Respondent No.2 against the present applicants for the offence punishable U/ss 306, 323, 504, 506 of the I.P.C. on the face of it is false. The complaint is filed after four months and is registered after seven months. According to the learned counsel, the complaint even if is taken as it is, the intention of the accused in abettingg the commission of the offence U/s 306 if the I.P.C. is not spelt out. The learned counsel submits

that the facts narrated in the complaint are so improbable that same can not be relied. The learned counsel relying on the judgment of the Apex Court in a case of **"State of Haryana and others Vs. Ch. Bhajan Lal and others"** reported in **AIR 1992 Supreme Court 604(1)**, submits that when the allegations in the complaint even if taken on their face value and accepted in entirety do not prima facie constitute any offence then this Court can exercise its jurisdiction U/s 482 of the Criminal Procedure Code.

3. The learned counsel further submits that the complaint has been filed with malafide intention. The FIR is registered on or about 14.5.2016. Prior to that Respondent No.3 herein had given threats to the applicants so as to allot land to the complainant. The grievance about it was made by the applicant No.4 herein on 20.4.2016 to various authorities, such as Superintendent of Police, the Director General of Police, the Hon'ble the Chief Minister. This fact would establish the falsity in the complaint. As the applicants did not accede to

the threats given by the Respondent No.3, FIR is registered against the applicants. The learned counsel submits that in 2014 applicant No.2 had partitioned the property in favour of the sons including the husband of the complainant. The mutation entry to that effect is also recorded and in the 7/12 extract also separate names are recorded of all the share holders including that of the husband of the complainant. The learned counsel further submits that in the complaint filed by the Respondent No.1 and in the Criminal Application filed for vacating the interim orders, contrary stand is taken by the Respondent No.1. The intention as is relevant and material for invoking Section 306 of the I.P.C. is totally absent. In absence of the same no offence could be made out. The learned counsel relies on the judgment of the Apex Court in the case of **"Gurucharan Singh Vs. State of Punjab"** in **Criminal Appeal No.1135 of 2016** dated December 2, **2016** and the judgment in the case of **"Sonti Rama Krishna Vs. Sonti Shanti Sree and another"** delivered in **SLP(Criminal)No.770/2007**. The learned counsel relying on the judgment of the

learned Single Judge of this Court in a case of "M/s Shri Srinivasa Cut Pieces Cloth Shop Rajahmundri, (A.P.) and another Vs. State of Maharashtra" reported in 2004 ALL MR(Cri) 1802, states that the Court can quash the proceedings even if discharge application is either filed or not filed or is pending. According to the learned counsel, on the basis of such absurd and improbable allegations made in the complaint, further proceedings need not be proceeded further and the complaint deserves to be quashed and set aside. The applicant No.3 is 60% handicap. It is highly improbable that she could have taken part in assault. In fact, it is a case of matrimonial discord between the complainant and the deceased husband. The complainant had illegitimate relations, because of which the deceased had to take such a step.

4. We have heard Mr.Qureshi, learned counsel for the complainant.

5. Learned Addl. Public Prosecutor submits that investigation is complete. Charge-sheet

would be filed within eight days before the Sessions Court.

6. There can not be any dispute with the proposition that if the complaint taken in its entirety, does not disclose any commission of offence, this Court can exercise its power U/s 482 of the Cr.P.C.

7. In the present case, no doubt, there is a delay in filing the complaint. The offence alleged is dated 14.10.2016. The complaint is filed on 20.2.2016 and the same is registered even subsequently i.e. in May 2016. The reason is given in the complaint that the complainant when the incident happened was pregnant. Thereafter she delivered and then the complaint is filed. There is no post mortem report nor any of the parties nor even the present applicants who are parents and the brothers of deceased had intimated the Police authorities. The deceased appears to have died unnatural death. The Police authorities have investigated the matter. The charge-sheet is also being filed within eight (8)

days as is stated by the learned A.P.P. Only because of the prohibitory orders of this Court, the same is not yet filed.

8. When the investigation is complete and the charge-sheet is to be filed within 7/8 days, it would not be appropriate at this stage to stall further proceedings. Even after the charge-sheet is filed, the applicants can have recourse to remedy as available under the law. The applicants have multifarious remedies under the law even after the charge-sheet is filed and before the charges are framed.

9. Considering the fact that the investigation is now complete and charge-sheet is being filed, we refrain ourselves from commenting on the factual merits and demerits of the matter. We dispose of the present applications giving liberty to the parties to avail all the necessary remedies after the charge-sheet is filed. We also grant liberty to the applicants to prosecute the remedies available with regard to prayer clause (b).

10. Both the Criminal Applications are disposed of.

(K.L.WADANE,J.) (S.V.GANGAPURWALA,J.)

11. In the morning session we had disposed of Criminal Applications. In the afternoon sessions at the time of rising, Mr.Amit S.Deshpande, learned counsel holding for Mr.M.V.Ghatge, learned counsel who argued the matter in the morning session seeks continuation of the interim relief. The order was dictated in open Court in presence of the counsel for other side. At that time no such request was made. The counsel for other side is not present. It would be inappropriate to pass any orders in absence of the counsel for other side. Even otherwise we have granted liberty to the applicants to take up appropriate proceedings after the charge-sheet is filed.

(K.L.WADANE, J.) (S.V.GANGAPURWALA, J.)

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