

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

CRIMINAL APPLICATION NO. 175 OF 2017

Mansingh S/o Dhondibhau Shitole,
Age: 50 years, Occu: Agril.,
R/o: Bhangaon, Tq. Shrigonda,
District Ahmednagar

...APPLICANT

versus

1. The State of Maharashtra,
Through Investigating Officer,
Shrigonda Police Station,
Ta. Shroginda, Dist. Ahmednagar.
2. Shakuntala W/o Ramesh Toradmal
Age: 65 years, Occ. Household,
R/o: Bhangaon, Tq. Shrigonda,
District Ahmednagar.
3. Shri Bharat More,
Age: 48 years Occ: Service as PSI
Shrigonda Police Station, Dist. Ahmednagar,
R/o : Shrigonda, Dist. Ahmednagar. ...RESPONDENTS

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Mr. N.B. Narwade, Advocate for applicant
Mr. P.G. Borade, APP for Respondent Nos.1 and 3
Mr. R.P. Phatake, Advocate for respondent No. 2

.....

WITH

CRIMINAL APPLICATION NO. 987 OF 2017

1. Mirabai W/o Bhaskar Kundade,
Age: 50 years, Occ. Agril.,
2. Rama @ Vikas Bhaskar Kundade,
Age: 26 years, Occu. Agril.,
3. Vishwanath S/o Ambar Kundade,
Age: 48 years, Occu. Agril.,
All R/o Bhangaon, Tq. Shrigonda,
Dist. Ahemadnagar. ...APPLICANTS

versus

1. The State of Maharashtra,
Through Investigating Officer,
Shrigonda Police Station,
Ta. Shroginda, Dist. Ahmednagar.
2. Shakuntala W/o Ramesh Toradmal
Age: 65 years, Occ. Household,
R/o: Bhangaon, Tq. Shrigonda,
District Ahmednagar. ...RESPONDENTS

.....

Mr. N.B. Narwade, Advocate for applicants
Mr. P.G. Borade, APP for Respondent No.1 -State
Mr. R.P. Phatake, Advocate for respondent No. 2

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

RESERVED ON : 20th APRIL, 2017.

PRONOUNCED ON: 14th June, 2017.

ORAL JUDGMENT :- (Per : K.K. Sonawane, J.)

1. Rule. Rule made returnable forthwith. Heard finally, with consent of the parties.
2. The applicants taking recourse of section 482 of the Criminal Procedure Code (for short "Cr.P.C."), preferred present applications seeking relief to quash and set aside the impugned First Information Report (for short "FIR") bearing crime No. I-341 of 2016 registered at Shrigonda Police Station, District Ahmednagar, under sections 143, 147, 337, 354, 323, 504 and

506 of the Indian Penal Code (for short "IPC") and under section 3 (1) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") and under section 7(1)(b) of Protection of Civil Rights Act.

3. The genesis of the applications culled out in brief is that, first informant-Shakuntala W/o Ramesh Toradmal, resident of Bhangaon, Ta. Shrigonda, District Ahmednagar on 22-08-2016 approached to the Police Station, Shrigonda and ventilated the grievance that, she accompanied with husband - Ramesh, both were residing in the field Gut No. 162 by erecting shed and eking livelihood by doing agricultural work. The land of accused Bhaskar @ Nana Ambad Kundade was located abutting to the land of the first informant. The accused - Bhaskar and his family members were residing in the field and they used to harass and pick-up the quarrels with first informant on one or other pretext. It has been alleged that on 13-08-2016 in the morning at about 10.00 a.m., first informant - Shakuntala and her daughter-in-law both started agricultural work of uprooting the grass in the Bajara crop of their field. In the evening at about 5.00 p.m., accused Bhaskar Kundade, his wife Meerabai Bhaskar @ Nana Kundade, his son Rama Kundade, his brother Vishwanath Ambar Kundade and one Mr. Mansing Dhondibhau Shitole arrived in the field of the first informant and they started reprimanding and

hackled the first informant and her daughter in-law. They thrown grass uprooted by first informant and her daughter in-law in the Bajara crop. The first informant asked accused for why throwing the grass in Bajara Crop, as she wanted to take the grass at home for she-goats. But, accused hurled castiest abuses and assaulted first informant and her daughter in-law by kick, fist and with the handle of axe. Accused Bhaskar @ Nana caught hold the hand of her daughter in-law and roughed up her. He had made attempt to outrage the modesty of her daughter in-law. The assailants also gave threat to the first informant and went away. After the alleged incident first informant and her daughter in-law immediately approached to the Shrigonda Police Station, and filed the report of incident. At that time, they were mentally disturbed and in frighten condition. Therefore, unwittingly the first informant forget to make a reference of alleged castiest abuses and act of molestation of daughter-in-law in the police report. After medical treatment they both returned to home. The first informant divulged about the incident to her husband, sons and other relatives. After consultation and discussion, first informant again visited to the Shrigonda Police Station on 22-08-2016 and filed the FIR in detail about the castiest abuses and molestation of her daughter in law by accused.

4. Pursuant to FIR of Shakuntala Toradmal dated 22-08-2016

Police of Shrigonda Police Station registered the crime No. I-341 of 2016 and set the criminal law in motion. Investigating Officer commenced the investigation and recorded the statements of witnesses acquainted with the facts of the case. Meanwhile, applicants approached to this court and preferred the present application invoking remedy under section 482 of the Cr.P.C., and prayed to quashed and set aside the impugned FIR bearing Crime No. I-341 of 2016 registered at Shrigonda Police Station, against them.

5. The learned counsel for the applicant vehemently submitted that applicants are innocent of the charges pitted against them. They have not committed any crime, but they are implicated in this case on false and fabricated accusations. The learned counsel for applicants harped on the circumstance that, after alleged incident occurred on 13-08-2016, first informant visited to Shrigonda Police Station and lodged the report against applicants. But, she has not stated about castiest allegations or molestation of her daughter in-law by the accused during the course of incident. In the report, she has disclosed only about the assault by accused on herself and her daughter in-law by kick, fist and with the handle of axe. She has also stated in her report that the present applicant - Mansing Dhondibhau Shitole had arrived at the spot for intervention in the fight. There was

only contusion injury received to the first informant and her daughter-in-law. Therefore, they were referred to medical treatment. According to learned counsel, in view of nature of allegations and the injuries received to the first informant, Police of Shrigonda Police Station registered the NC No. 656 of 2016 under section 323, 504 and 506 of the IPC and referred first informant to Magistrate. There was no offence registered against applicants nor first informant stated about commission of cognizable offence in her report dated 13-08-2016. The learned counsel submitted that the first informant on consultation with her husband, relatives and others after efflux of 8/9 days filed subsequent impugned FIR at belated stage and made false accusation against applicants. The subsequent FIR of the same incident allegedly occurred on 13-08-2016 is after thought, concocted and not maintainable at all. Therefore, the learned counsel prayed to quash and set aside the impugned FIR by exercising powers under section 482 of the Cr.P.C. The learned counsel fervidly contended that applicant - Mansing Shitole did not participate or involved in the alleged assault, but he attempted to intervene in the scuffle and pacify the quarrel. But, he has been falsely implicated by making false allegations in the subsequent FIR. The learned counsel for the applicants added that no such incident as alleged by the first informant has occurred, as the first informant did not make reference of such

incident in her report filed on 13-08-2016. These circumstances are sufficient to draw inference that impugned FIR is filed with malafide intention to wreak vengeance against the applicants. The learned counsel submitted that applicants and family members of the first informant are on inimical terms. There were complaints filed by family members of first informant against applicants as well as other villagers by taking disadvantage of provisions of Atrocities Act. He contended that after alleged report dated 13-08-2016, first informant and her family members gave threats to the applicants to embroil them by making false allegation of caste abuses. The applicants due to apprehension of false accusation of caste abuses rushed to the Police of Shrigonda Police Station as well as Superintendent of Police, Ahmednagar District and filed the application to shield them from false complaint. However, the first informant preferred the present complaint. According to learned counsel, first informant and her family members have a habit of making false allegations on caste against villagers. The impugned FIR being second FIR of the same incident occurred on 13-08-2016 is not maintainable, within ambit of law. Therefore, he prayed to allow application and exercise inherent powers under section 482 of the Cr.P.C., to quash and set aside the impugned FIR, which is totally false, baseless and not sustainable at all.

6. In refutal, the learned counsel for respondent No. 2 - first informant vehemently raised the objection and opposed the contentions put forth on behalf of applicants. According to learned counsel, the Police of Shrigonda Police Station initially registered the N.C. against the applicants. But, when the first informant discussed the events of alleged incident in detail to the family members, it was decided to file the first information report against the applicants. The police has rightly registered the crime against the applicants for commission of cognizable offence. It cannot be said that the impugned FIR is second FIR of same incident. He contends that first informant was the rustic, illiterate lady, she was mentally disturb and under frighten condition at the time of report to Police. Therefore, she did not disclose the alleged incident in detail. But, later on she again approached to the concerned Police to ventilate her grievance against the applicants and lodged the detail report. According to learned counsel, there is no legal infirmity in the registration of crime for commission of cognizable offence against the applicants. He denied the allegations of castiest abuses and molestation made by the first informant are false and fabricated one. There was no misuse of provisions of Atrocities Act. He prayed not to nod in favour of applicants and dismiss the application.

7. The learned APP stepped into the shoe of learned counsel for respondent No. 2 and submitted that the action of Police for

registration of crime against applicants is proper and within purview of law. Therefore, application deserves to be rejected.

8. In the instant case, the attending circumstances on record reflect that the first informant on 13-08-2016 after the alleged incident of assault immediately lodged the report against the applicants to the Police of Shrigonda Police Station. But, as the information was relating to non-cognizable offence, the concerned Police registered the N.C. No. 656 of 2016 under sections 323, 504 and 506 of the IPC. However, later on the first informant once again visited to the Police of Shrigonda Police Station on 22-08-2016 and filed the information about commission of alleged cognizable offence against the applicants. Pursuant to allegations of cognizable offence of molestation and castiest abuses, the Police of Shringonda Police Station registered the impugned crime and set the investigation into motion.

9. It is not in dispute that the very purpose of registration of FIR is to set the criminal law in motion, which would eventually culminate in filing the Police report under section 169, 170 or 173 of the Cr.P.C. The law does not permit more than one FIR in relation to the same incident or factual aspect. The Section 154 of the Cr.P.C. pertains to cognizable cases, while section 155 deals with the information as to non-cognizable cases and investigation of such cases. It is evident that the scheme of

sections 154, 156 and 190 of Cr.P.C. does not recognize more than one FIR about the allegations of one and the same cognizable offence.

10. According to learned counsel for the applicants, the impugned FIR bearing Crime No. I-341 of 2016 being an second FIR of one and the same alleged incident of assault occurred on 13-08-2016 is not sustainable within purview of law and deserves to be quashed and set aside. We are not in agreement with contentions propounded on behalf of learned counsel for the applicants for reference of the impugned FIR as an subsequent or second FIR of one and the same incident occurred on 13-08-2016. It is to be noted that informant Smt. Shakuntala Toradmal approached to the Shrigonda Police Station on 13-08-2016 and furnished the information about occurrence of non-cognizable offence. The concerned Police took the entry of the substance of information in the book kept in the Police Station for such purpose and referred the informant -Shakuntala to the Magistrate under section 155 of the Cr.P.C. There was no any offence registered by the Police to set the criminal law in motion for investigation and to file report under section 173 of the Cr.P.C. Therefore, the report of the first informant – Shakuntala dated 13-08-2016 for the information as to commission of non-cognizable offence could not be treated as FIR under section 154

of Cr.P.C. In contrast, the information given on 22-08-2016, on the part of informant Shakuntala was of occurrence of cognizable offence, which impelled the concerned Police to take recourse of provisions of section 154 of the Cr.P.C. for registration of crime against alleged culprits and set the criminal law in motion for collecting evidence in regard to alleged crime. The earlier information furnished on 13-08-2016 to the concerned Police by the informant Shakuntala did not clearly specify the commission of cognizable offence and consequently would not be an FIR under section 154 of Cr.P.C. The mere fact that this information was first in point of time does not by itself clothe it with character of FIR.

11. We would reiterate that there was no any crime registered nor there was any investigation set in motion on the basis of report of first informant - Shakuntala dated 13-08-2016. Obviously, no question arises for application of section 154 of Cr.P.C. in this case prior to registration of impugned FIR dated 22-08-2016. In such circumstances, it would fallacious to appreciate that as the report of the alleged incident was filed on 13-08-2016 resulting into registration of N.C. No. 656 of 2016, the impugned FIR dated 22-08-2016 is not amenable within the ambit of law being second FIR and same be treated as statement of first informant under section 161 of Cr.P.C.. The impugned FIR

would not be termed as a subsequent or second FIR of the crime reported to the Police earlier on 13-08-2016 by the first informant.

12. In view of object and purpose of provisions of Section 154 of the Cr.P.C., we are of the opinion that the impugned FIR cannot be treated as subsequent or second FIR in this crime. The earlier report filed on behalf of first informant dated 13-08-2016 was relating to non-cognizable offence. The Police caused entry of the same in the book maintained and preserve for the same in the Police Station and referred the first informant to the Magistrate as contemplated under section 155 of Cr.P.C.. There were no parallel investigation going on following the reports filed on 13-08-2016 as well as impugned FIR dated 22-08-2016. It is preposterous to appreciate that the impugned FIR is not maintainable with the purview of law being second - subsequent FIR. In the result, it would unjust and improper to quash and set aside the impugned FIR on this legal aspect.

13. Now, in regard to merits of allegations to allow the Investigating Officer for continuation of investigation against the applicants-accused, we are of the opinion that the allegations made in the FIR, if taken at their face value and accepted in their entirety *prima faice* constitute the offence and make out a case against the applicants. The investigation is at initial stage, it

would not be justifiable to appreciate the allegations cast on behalf of applicants that the impugned FIR is filed with *malafide* intention to wreak vengeance on the part of first informant. In case, the impugned FIR is quashed and set aside, on this count at this initial stage, it would result in finality of the accusation nurtured against the applicants, without allowing prosecution to adduce evidence to substantiate the claim. This is not a stage of evaluating truthfulness or otherwise of the allegations made on behalf of prosecution against the applicants. It is to be noted that the Hon'ble Apex Court in the case of "**State of Haryana V/s Bhajanlal**" reported in **AIR 1992 SC 604** has delineated the guidelines in paragraph No. 109 as below:

"109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

14. In view of aforesaid exposition of law laid down by the Apex Court and the list of categories of cases of myriad kind given by way of illustration for exercising inherent powers to prevent abuse of process of law or otherwise to secure ends of justice in

the Bhajanlal's Case (Supra), we are not inclined to nod in favour of applicants. The allegations made in the FIR *prima facie* disclose the commission of cognizable offence to allow the Investigating Officer to proceed further for investigation into crime to collect the evidence and to file report, if any, under section 173 of Cr.P.C.

15. In the above premises, we are of the considered opinion that the impugned FIR bearing Crime No. I-341 of 2016 could not be termed as second-subsequent FIR of one and the same incident occurred on 13-08-2016. An information given by the informant - Shakuntala Toradmal on 13-08-2016 does not disclose commission of cognizable offence for further process under section 154 of the Cr.P.C. The Police registered the NC No. 656 of 2016 by invoking powers under section 155 of Cr.P.C. There was no crime registered nor investigation was set in motion on the report of Shakuntala filed on 13-08-2016. Therefore, it cannot be termed as FIR only on the fact that it was filed first in point of time. The report dated 13-08-2016 of the first informant Shakuntala at the most would be considered as previous statement under section 157 of the Evidence Act for corroboration or contradiction to impeach credibility of the first informant during the course of trial as prescribed under section 145 of Evidence Act. But, the impugned penal action initiated

pursuant to FIR bearing Crime No. I-341 of 2016 would not liable to be quashed and set aside merely on the fact that first informant filed earlier report dated 13-08-2016 of the same incident of assault by the applicants/accused. In such peculiar circumstances, both the applications deserve to be dismissed being devoid of merit.

16. In view of the aforesaid discussion, both the Criminal Applications stand rejected and disposed of accordingly. Rule is discharged. No order as to costs.

Sd/-

[K. K. SONAWANE, J.

sd/-

[S.S. SHINDE, J.]

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