

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.362 OF 2017

- 1) Rameshwar s/o Nivrutti Bingole,
Age-40 years, Occu:Service,
R/o-Rohini, Tq-Chakur, Dist-Latur,
Presently residing at Post-Jarandi,
Tq-Soyegaon, Dist-Aurangabad,
- 2) Laxmibai w/o Nivrutti Bingole,
Age-75 years, Occu:Household,
R/o-Rohini, Tq-Chakur, Dist-Latur,
- 3) Parshuram s/o Nivrutti Bingole,
Age-45 years, Occu:Agriculture,
R/o-Rohini, Tq-Chakur, Dist-Latur,
- 4) Mahananda d/o Nivrutti Bingole,
Age-55 years, Occu:Household,
R/o-Rohini, Tq-Chakur, Dist-Latur.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector
Chakur Police Station,
Tq-Chakur, Dist-Latur,
- 2) Chitrakala w/o Rameshwar Bingole,
Age-29 years, Occu:Household,
R/o-Rohini, Tq-Chakur, Dist-Latur,
Presently residing at-Zhari(Bu.),
Tq-Latur, Dist-Latur.

...RESPONDENTS

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Mr. Satish A. Gaikwad Advocate for Applicants.
Ms. P.V. Diggikar, A.P.P. for Respondent No.1.
Mr. I.D. Maniyar Advocate h/f. Mr. S.B. Madde
Advocate for Respondent No.2.

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

DATE OF RESERVING JUDGMENT : 10TH APRIL, 2017.

DATE OF PRONOUNCING JUDGMENT: 12TH APRIL, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

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

2. This Application is filed by the Applicants praying therein to quash and set aside the First Information Report bearing Crime No.1 of 2017 registered with Chakur Police Station against the Applicants for the offence punishable under Section 498-A, 323, 504, 506 read with 34 of the Indian Penal Code on 1st January, 2017.

3. Learned counsel appearing for the Applicants submits that even if the allegations in the First Information Report (for short "FIR") are read in its entirety and taken at its face value, alleged offences are not disclosed. He further submits that there is no specific overt act attributed qua each of the Applicants, no date of incident is mentioned and there are no specific allegations and therefore he submits that the FIR may be quashed.

4. On the other hand, learned A.P.P. appearing for the State relying upon the investigation papers, submits that during the course of investigation sufficient material has been collected by the Investigating Officer and trial can proceed on the basis of material collected by the Investigating Officer. She submits that charge-sheet is filed by the Investigating Officer in the month of March, 2017.

5. Learned counsel appearing for Respondent No.2 submitted that all the Applicants harassed the informant by making unlawful demands. Relying upon the contents of the FIR, he submits that overt act is attributed against each of the Applicants and therefore this Application may be rejected.

6. We have given careful consideration to the submissions of the counsel appearing for the Applicants, learned A.P.P. appearing for the State and learned counsel appearing for Respondent No.2, with their able assistance, perused the grounds taken in the Application, annexures thereto and investigation papers.

7. At the outset, it needs to be stated that while issuing notices on 30th January, 2017, this Court by way of ad-interim relief, observed that in case charge-sheet is not yet filed the same

shall not be filed till next date of hearing. In that view of the matter, without seeking leave of this Court, there was no question of filing the charge-sheet by the Investigating Officer.

8. Be that as it may, we have considered the allegations in the FIR in its entirety. So far Applicant No.1 - Rameshwar s/o Nivrutti Bingole, who is husband of Respondent No.2, is concerned, there are allegations of beating, ill-treatment and driving out Respondent No.2 from the matrimonial home and also the illegal demand of Rs.2,00,000/-, and therefore we are not inclined to consider his prayer for quashing the FIR.

9. So far Applicant No.2 - Laxmibai w/o Nivrutti Bingole is concerned, she is mother-in-law, Applicant No.3 - Parshuram s/o Nivrutti Bingole is brother-in-law and Applicant No.4 - Mahananda d/o Nivrutti Bingole is sister-in-law of Respondent No.2. Marriage of Respondent No.2 with

Applicant No.1 was solemnized on 30th April, 2006. Upon careful perusal of the allegations in the FIR, it is stated by Respondent No.2 that initially for two years there was no illegal demand or ill-treatment and she was properly treated by the Applicants. Upon careful perusal of the contents of the FIR, so far as Applicant Nos.2 to 4 are concerned, no specific incident or specific overt act is attributed qua each of the Applicants. There are general allegations of demand of an amount of Rs.2,00,000/-. Though there are allegations of ill-treatment/harassment and beating, nevertheless those are omnibus in nature and on the basis of such allegations, the trial cannot proceed further.

10. The Supreme Court in the case of **Geeta Mehrotra and another Vs. State of Uttar Pradesh and another**¹ in the facts of that case held that casual reference to a large number of members of

¹ (2012) 10 SCC 741

the husband's family without any allegation of active involvement would not justify taking cognizance against them and subjecting them to trial. In the said Judgment, there is also reference of the Judgment of the Supreme Court in the case of **G.V.Rao Vs.L.H.V. Prasad**² wherein in para 12 it is observed thus:

"12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and

² (2000) 3 SCC 693

terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts."

11. The Supreme Court in the case of **State of Haryana V/s Bhajan Lal (supra)** held that, in following categories the Court would be able to quash the F.I.R. :

- 1 Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted 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 a Magistrate within the purview of Section 155(2) of the Code.
- 3 Where the uncontroverted allegations made in the FIR 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 accused.

4 Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-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 FIR 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 provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7 Where a criminal proceeding is manifestly attended with mala fide 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.

12. Upon careful perusal of the allegations in the FIR, as already observed, those are omnibus in nature and do not disclose any cognizable offence as such. Therefore, the case of the Applicant Nos.2 to 4 is covered under Category

Nos.1 and 2 of the of the Categories laid down by the Supreme Court in the case of **State of Haryana V/s Bhajan Lal (supra)**.

13. In that view of the matter, for the reasons afore stated, the Application of Applicant No.1 - Rameshwar s/o Nivrutti Bingole stands rejected.

14. The Application of Applicant No.2 - Laxmibai w/o Nivrutti Bingole, Applicant No.3 - Parshuram s/o Nivrutti Bingole and Applicant No.4 - Mahananda d/o Nivrutti Bingole, stands allowed. The FIR bearing Crime No.1 of 2017 registered with Chakur Police Station on 1st January, 2017, against the Applicants for the offence punishable under Section 498-A, 323, 504, 506 read with 34 of the Indian Penal Code and further proceedings arising out of the same including charge-sheet if any, stands quashed and set aside qua Applicant Nos.2 to 4.

15. Rule made absolute in above terms. The Criminal Application stands disposed of, accordingly.

16. We make it clear that the observations made herein above are prima facie in nature and for the purpose of adjudication of present Application only.

[K.K. SONAWANE, J.]

asb/APR17

[S.S. SHINDE, J.]