

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.905 OF 2017

- 1) Madan s/o Shankar Bhivsane,
Age-62 years, Occu:Pensioner,
R/o-Building No.6, Flat No.5,
Bhagatsingh Nagar, Pisa Devi Road,
Harsool, Aurangabad,
Tq. & Dist-Aurangabad,
- 2) Vimalbai w/o Madan Bhivsane,
Age-58 years, Occu:Household,
R/o-As Above,
- 3) Sow. Meenakshi w/o Deepak Wagh,
Age-Major, Occu:Service,
R/o-House of Meshram Near SBOA,
Public School Hudco, Aurangabad,
Tq. & Dist-Aurangabad,
- 4) Vaishali w/o Siddharth Wanjarwadekar,
Age-Major, Occu:Service,
R/o-C/o-Mahendrasingh Sitaramsing Khatwar,
Kaka Chowk, Civil Line Gondiya,
Tq. & Dist-Gondiya,
- 5) Ku. Jyotsna d/o Madan Bhivsane,
Age-Major, Occu:Education,
R/o-Building No.6, Flat No.5,
Bhagatsingh Nagar, Pisa Devi Road,
Harsool, Aurangabad,
Tq. & Dist-Aurangabad,
- 6) Harsha s/o Madan Bhivsane,
Age-Major, Occu:Nil,
R/o-As above.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through: Police Inspector,
Police Station, Cidco, Aurangabad,
Tq. & Dist-Aurangabad,
- 2) Sow. Shashirekha w/o Deepak Bhivsane,
Age-Major, Occu:Household,
R/o-J-30, Rathi Sansar, Pisadevi Road,
Near Vaishali Dhaba, Jadhavwadi,
Harsool, Aurangabad,
Tq. & Dist-Aurangabad.

...RESPONDENTS

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Mr. Milind K. Deshpande Advocate for
Applicants.

Mr. V.M. Kagne, A.P.P. for Respondent No.1.

Mr. R.O. Awasarmol Advocate for Respondent No.2.

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**CORAM: S.S. SHINDE AND
MANGESH S. PATIL, JJ.**

DATE OF RESERVING JUDGMENT : 23RD NOVEMBER, 2017

DATE OF PRONOUNCING JUDGMENT: 29TH NOVEMBER, 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 with following

prayer:

C] The Hon'ble Court may be pleased to issue appropriate order for quashing and setting aside the F.I.R. bearing No.1001/2016 registered with Cidco Police Station Aurangabad on 8.12.2016 against the applicants No.1 to 6 for the offences punishable U/s. 498-A, 323, 504, 506, 34 of I.P.C.

3. Learned counsel appearing for Applicants invites our attention to the allegations in the First Information Report (for short "F.I.R.") and submits that there are general allegations without mentioning any specific incident or overt act qua Applicants. Applicant Nos.1 and 2 are father-in-law and mother-in law of Respondent No.2. Applicant Nos.3 and 4 are married sister-in-laws of Respondent No.2 and both of them are residing separately at their matrimonial places. Applicant No.5 is unmarried sister-in-law of Respondent No.2, residing separately. It is further submitted that Respondent No.2 wanted to grab the house

property of Applicant No.1 and in order to pressurize Applicant No.1 to give share in the house property, present F.I.R. has been lodged. It is submitted that even if the allegations in the F.I.R. are taken at its face value and read in its entirety, an alleged offences are not disclosed. The allegations in the F.I.R. are inherently improbable in as much as, even as per the allegations of Respondent No.2, she along with her husband, since 13th November, 2011 till 23rd December, 2015, were residing at Rajhans society, M-2 Road, N-9 CIDCO, Aurangbad, separately from Applicant Nos.1 and 2. It is submitted that though the alleged harassment/ill-treatment is from 13th November, 2012, however the F.I.R. has been belatedly lodged in the month of December, 2016.

4. Learned counsel further submitted that since Applicant Nos.3 and 4 are married sisters of husband of Respondent No.2 and residing separately at their matrimonial houses, the allegations against them are false. Learned counsel further

submitted that as Respondent No.2 used to harass Applicant No.1 and used to demand share in the house property at Rathi Sansar, Applicant No.1 was compelled to file complaint with police authorities. It is further submitted that on 22nd December, 2016, Applicant No.1 has filed Regular Civil Suit against Respondent No.2 and her husband, in the Court of Civil Judge, Senior Division, Aurangabad, being Regular Civil Suit No.529 of 2016 and prayed for mandatory injunction, thereby seeking direction against them to leave the suit house forthwith and also prayed for perpetual injunction. It is submitted that the F.I.R. is filed only with a view to pressurize the Applicants and therefore it is prayed that the F.I.R. may be quashed and set aside.

5. On the other hand, learned A.P.P. appearing for the State invites our attention to the allegations made against the Applicants in the First Information Report and the statement of witnesses, and submits that upon careful perusal

of the allegations in the First Information Report, it is abundantly clear that the ingredients of the alleged offences have been disclosed and therefore needs further investigation so as to take those allegations to the logical end. It is submitted that the allegations in the First Information Report will have to be read as they appear and can be tested only during the trial and hence the Application be rejected.

6. Learned counsel appearing for Respondent No.2 invites our attention to the the allegations in the F.I.R., statement of the witnesses and affidavit-in-reply filed by Respondent No.2 and and submits that merely because Applicant Nos. 3 and 4 are residing separately at their matrimonial houses, is no ground to quash the F.I.R. There are specific allegations against all the Applicants. All the Applicants have physically and mentally harassed the informant. There are also allegations of demand and instigation. Learned

counsel further invites our attention to the statements of the witnesses and submits that contents of the said statement would clearly demonstrate the involvement of the Applicants in the alleged offences.

7. We have given careful consideration to the submissions of the learned counsel appearing for the respective parties. With their able assistance, we have perused the grounds taken in the Application, annexures thereto, allegations in the F.I.R. and also statement of witnesses and other documents placed on record along with investigation papers. Upon careful perusal of the contents in the F.I.R., it appears that alleged ill-treatment is for the period from 23rd November, 2012 till 1st June, 2016, however the F.I.R. was lodged on 8th December, 2016. Therefore, we find considerable force in the arguments of learned counsel appearing for the Applicants that there is considerable delay in lodging the F.I.R.

8. Upon careful perusal of the allegations in the F.I.R., at the highest allegations against Applicant Nos.3 and 4 can be said to be instigation for the alleged commission of offence by other Applicants. Applicant Nos.3 and 4 are married sisters of husband of Respondent No.2. There are casual references to their names and the allegations are general in nature. Upon careful perusal of the allegations in the F.I.R. and also the statement of witnesses, in our opinion, the alleged offences are not disclosed as against any of the Applicants. As rightly submitted by learned counsel appearing for the Applicants, upon perusal of the documents placed on record, it reveals that civil dispute is pending between Respondent No.2 and Applicant No.1 in respect of the house property. Prima facie, it reveals from the perusal of the documents placed on record that even Applicant No.1 approached the police authorities and filed complaints against Respondent No.2 - daughter-in-law, complaining

that she is harassing Applicant No.1 on the count of share in house property. Upon careful perusal of the allegations as against the Applicants, neither any specific date of incident nor any specific allegation qua each of the Applicant have been mentioned. There are general allegations that all the Applicants have physically and mentally harassed Respondent No.2. It is pertinent to mention that, admittedly Respondent No.2 and her husband are residing in the house owned by Applicant No.1, and Applicant No.1 with his family, is residing at some other place. Therefore, in our opinion, on both counts i.e. the allegations are general in nature, casual references are given, and except husband allegations are made against entire family members of the husband of Respondent No.2, and secondly it appears that F.I.R. is lodged maliciously with an ulterior motive, we are inclined to allow this Application.

Mehrotra and another Vs. State of Uttar Pradesh and another¹ in the facts of that case held that casual reference to a large number of members of 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. Prasad² 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

1 (2012) 10 SCC 741

2 (2000) 3 SCC 693

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 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."

10. *The Supreme Court in the case of "State of Haryana V/s Bhajan Lal³" held that, in following categories the Court would be able to quash the F.I.R.:*

"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the

3 AIR 1992 SC 604

Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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.*

11. Upon careful perusal of the allegations in the First Information Report, we find that those are general in nature without mentioning any specific overt-act qua each of the Applicant and without any specific incident. Therefore, in our considered opinion, keeping in view the categories laid down in the case of Bhajanlal (supra), the case of the Applicants would fall within category Nos.1 and 7 of the aforesaid categories. In that view of the matter, an inevitable conclusion is that the First Information Report deserves to be quashed and set aside.

12. In the result, the First Information Report is quashed and set aside. Rule is made absolute in terms of prayer clause "C]" to the Application. The Application is allowed and the same stands disposed of, accordingly.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]