

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

CRIMINAL APPLICATION NO.1187 OF 2017

1. Rauf Abdulla Shaikh.
Age 42 Years, Occ.Business,
R/o. Roshan Gate, Aurangabad,
Tal. & District Aurangabad.
2. Khalimabi Abdulla Shaikh,
Age 70 years, Occ. Nil,
R/o. as above.
3. Mubarak Abdulla Shaikh,
Age 48 years, Occ. Business,
R/o. As above.
4. Mujib Abdulla Shaikh,
Age 44 years, Occ. Business,
R/o. As above.
5. Nafisa Begum Mubarak Shaikh,
Age 40 Years, Occ. Household,
R/o. as above.

APPLICANTS

VERSUS

1. The State of Maharashtra
Through Incharge Police Station
Officer, Police Station, Sillod,
Tal.Sillod, Dist. Aurangabad.
2. Yasminbai w/o.Rauf Shaikh
Age 31 years, Occ. Household,
R/o. Shahu Nagar, Sillod,
Tal.Sillod, District Aurangabad

RESPONDENTS

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Mr.N.T.Tribhuwan, Advocate for the applicants
Mr.D.R.Kale, APP for Respondent–State
Mr.R.C.Bora, Advocate for respondent no.2

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

DATE : 17.11.2017

ORDER:

1] This application is filed praying therein to quash and set aside the First Information Report No.163/2016 [for short 'FIR'], registered with Sillod Police Station, Sillod, District Aurangabad, for the offence under Sections 498A, 323, 504, 506 of the Indian Penal Code.

2] At the outset, learned counsel appearing for the applicants, on instructions, does not press this application in respect of applicant no.1, namely, Rauf Abdulla Shaikh. The application in respect of applicant no.1 is dismissed as withdrawn.

3] We have heard the learned counsel appearing for the applicants, learned APP

appearing for the respondent-State and learned counsel appearing for respondent no.2.

4] Learned counsel appearing for the applicants submits that, even if the allegations in the FIR are taken at its face value and read in its entirety, the alleged offences are not disclosed. He further submits that so far as applicant no. 2 is concerned, she is about 70 years old and is suffering from various ailments. The learned counsel has tendered across the Bar discharge card issued by the Government Medical College and Hospital, Aurangabad and the same is taken on record. He further submits that so far as applicant nos.3 to 5 are concerned, though they are residing in same building, however in different blocks.

5] It is submitted that no any specific incident or overt act qua each of the

applicants i.e. applicant nos.2 to 5 has been mentioned in the FIR. There are vague allegations, which would not constitute the alleged offences. He further submits that it is an admitted fact that, respondent no.2 left matrimonial home on 12th May, 2015 and the FIR has been lodged belatedly on 27th September, 2016. He further submits that applicant nos.3 to 5 are working as Labourers and unnecessarily they have been implicated in the alleged offences. Therefore, he submits that the application deserves to be allowed.

6] On the other hand, learned counsel appearing for respondent no.2 relying upon the contents of the FIR and also affidavit-in-reply filed on behalf of respondent no.2, submits that *prima facie* the alleged offences have been disclosed against all the applicants and need further investigation. The allegations in the FIR will have to be

read as it is and appreciation of the said allegations, even in a summary manner, is not permissible. It is submitted that merely the allegations are investigated; would not cause any prejudice to the applicants. It is submitted that all the applicants are residing in the same building. Therefore, the learned counsel submits that the application may be rejected.

7] Learned APP appearing for the respondent-State submits that the alleged offences have been disclosed, need further investigation, and therefore, the prayer for quashing the FIR may not be considered.

8] 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 averments in the application, annexures thereto, reply filed by respondent no.2 and

in particular the contents of the FIR. Upon careful perusal of the allegations in the FIR, no any specific incident or instances of the alleged ill-treatment or harassment have been mentioned in the FIR. There are general allegations and casual references in respect of applicant nos.2 to 5. As rightly contended by the learned counsel appearing for the applicants that the age of applicant no.2 is above 70 years and she is suffering from various ailments.

9] 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 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 to the

1 (2012) 10 SCC 741

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 terminate their disputes amicably by mutual agreement instead of fighting

2 (2000) 3 SCC 693

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 Lal**³ 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 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

3 AIR 1992 SC 604

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] Therefore, keeping in view the judgments of the Supreme Court in the cases of **Geeta Mehrotra and another Vs. State of Uttar Pradesh and another [cited supra]** and **State of Haryana V/s Bhajan Lal [cited**

supra], we are inclined to allow this application to the extent of applicant nos.2 to 5. Accordingly, the First Information Report No.163/2016 registered with Sillod Police Station, Sillod, District Aurangabad, for the offence under Sections 498A, 323, 504, 506 of the Indian Penal Code stands quashed and set aside to the extent of applicant nos.2 to 5 only. The application to the extent of applicant no.1 is dismissed as withdrawn.

12] The application is partly allowed and the same stands disposed of.

13] Needless to observe that the investigation can proceed further as against applicant no.1.

[MANGESH S.PATIL]
JUDGE

[S.S.SHINDE]
JUDGE