

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

CRIMINAL APPLICATION NO. 2215 OF 2016

1. Ibrahim Riyaj Bepari
(Unsound mind person)
through his natural guardian
Riyaj Osman Bepari,
age 60 years, Occ. R/o Plot
No.32, Ghorpadi Gaon,
Tq. & Dist. Pune.
 2. Amina w/o Riyaj Bepari,
age 54 yrs, Occ. R/o Plot No.32,
Ghorpadi Gaon, Tq. & Dist Pune.
 3. Ansar d/o Riyaj Bepari,
age 20 yrs, Occ. R/o Plot No.32,
Ghorpadi Gaon, Tq. & Dist Pune.
 4. Shabana w/o Sadik Shaikh,
age 36 yrs, Occ. Household,
r/o Shankar Sheth Road, Ghorpadi
Gaon, Tq. & Dist Pune.
 5. Fatima @ Farjeen w/o Samir Shaikh,
age 30 yrs, Occ. Household,
r/o c/o Shabnam Bekari,
Before Railway Station Road,
Kedgaon, Tq. & Dist. Pune.
 6. Aayesha w/o Altaaf Shaikh,
age 22 yrs, Occ. Household,
r/o Viklas Colony, Ghorpadi Gaon,
Tq. & Dist. Pune.
 7. Mumtaj d/o Riyaj Bepari,
age 26 yrs, Occ. Household,
R/o Plot No.32, Ghorpadi Gaon,
Tq. & dist. Pune.
 8. Shahenaj d/o Riyaj Bepari,
age 24 yrs, Occ. Household,
r/o Plot No.32, Ghorpadi Gaon,
Tq. & Dist. Pune.
- ..Applicants..

VERSUS

1. The State of Maharashtra.
2. Aayesha w/o Ibrahim Bepari,
age 29 yrs, Occ.Household,
r/o Daalimb, Tq. Omerga,
Dist. Osmababad. ..Respondents..

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WITH

CRIMINALAPPLN/5863/2016 IN APPLN/2215/2016

RIYAJ OSMAN BEPARI

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER.

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Advocate for Applicants : Mr Harshal Prakash Randhir

APP for Respondents: Mr P G Borade

Advocate for Respondent 2 : Mr R D Sanap

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CORAM : S.S. SHINDE & V.K. JADHAV, JJ.

Dated: January 27, 2017

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ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. At the outset, learned counsel appearing for the applicants, on instructions, seeks permission to withdraw the Criminal Application No. 2215/2016 to the extent of applicant nos.1)-Ibrahim Riyaz Bepari and 2)-Amina w/o Riyaz Bepari. Criminal application No.2215/2016 is dismissed as withdrawn.

3. This application is filed under section 482 of Criminal

Procedure Code, praying therein for quashing the First Information Report No.140/2015 registered on 29.12.2015 for the offence punishable under sections 498-A, 323, 504, 506 read with section 34 of Indian Penal Code at Murum Police Station, Tq. Omerga, District Osmanabad.

4. The learned counsel appearing for the applicants invited our attention to the allegations in the First Information Report and submits that, there are no specific allegations attributing overt act qua each of the applicants. He further submits that, First Information Report is lodged after seven years from the alleged offence. He further submits that, even if, the allegations in the F.I.R are taken at its face value and read in its entirety, the alleged offences are not disclosed and therefore, FIR may be quashed.

5. On the other hand, learned counsel appearing for respondent No.2 submits that, proceeding initiated by respondent No.2 for maintenance are resulted into issuing directions to the applicant no.1 to pay maintenance, however, the applicant no.1 has not deposited the amount as ordered by the competent Court towards maintenance. He further submits that, there are allegations against the applicants and there is continuous cause of action for respondent no.2

to agitate her grievance since the amount towards maintenance has not been deposited by the applicant no.1 and, therefore, there is no substance in the contention of the counsel appearing for the applicants that there is delay in lodging the FIR. Therefore, he submits that application may be rejected.

6. The learned APP also joins the prayer of respondent no.2 and submits that the application may be rejected.

7. We have given careful consideration to the rival submissions, with the able assistance of the learned counsel appearing for the parties, perused the allegations in the FIR and also reply filed by respondent No.2. Upon careful perusal of the allegations made in the FIR, so far as applicant nos. 3 to 8 are concerned, there are no specific allegations attributing overt act to them. Applicant nos. 4 to 8 are residing at different places and not in the matrimonial house. Though, applicant no.3 is residing in matrimonial home, there are no any specific allegations against him. So far as delay in lodging the FIR is concerned, we find considerable force in the submissions of the learned counsel appearing for respondent no.2 that there is continuous cause of action for respondent no.2 and therefore, the delay

in lodging the FIR is not a ground to quash the FIR. However, we leave it to the Trial Court to consider and decide the said point since the adjudication of point of delay would require appreciation of fact as well as law.

8. The Supreme Court in the case of "***State of Haryana V/s Bhajanlal***" {AIR 1992 SC 604} held that, in following categories the Court would be able to quash the F.I.R. :

1. Whether the allegations made in the F.I.R. 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 Magistrate within the purview of Section 155(2) of the Code;
3. Where the uncontroverted allegations made in the F.I.R. 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 applicant;
4. Where the allegations in the F.I.R. do not constitute a 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 F.I.R. 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 provisions in the Code of the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with malafide 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.

9. Keeping in view the category nos.1 and 2 and also allegations as against applicant nos. 3 to 8, we are of the considered view that, the case of applicant nos. 3 to 8 is covered under aforesaid categories.

10. In that view of the matter, so far as application to the extent of applicant nos. 3)-Ansar d/o Riyaj Bepari, 4)-Shabana w/o Sadik Shaikh, 5)-Fatima @ Farjeen w/o Samir Shaikh, 6)-Aayesha w/o Altaaf Shaikh, 7)-Mumtaj d/o Riyaj Bepari, 8)-Shahenaj d/o Riyaj Bepari, are concerned, same is partly allowed and the FIR No. 140/2015 registered with Murum Police Station, Tq. Omerga, District Osmanabad against applicants no. 3 to 8 stands quashed and set aside.

11. The applicant in application No.5863/2016 is father in law of respondent no.2. There are specific allegations against

him. In that view of the matter, Criminal Application no.5863/2013 stands rejected.

12. Since, Mr. R.D. Sanap the learned counsel is appointed as *amicus curie* to prosecute the cause of the petitioner, his fees be paid as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

(V.K. JADHAV, J.)

(S.S. SHINDE, J.)

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