

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

CRIMINAL APPLICATION NO.2002 OF 2017

1. Tukaram s/o.Bajirao Deshmukh,
Age: 55 Years, Occ: Service.
2. Vijayabai w/o. Tukaram Deshmukh,
Age: 50 years, Occ: Housewife.
3. Atul s/o. Tukaram Deshmukh,
Age: 25 years, Occ: Service.
4. Amol s/o. Tukaram Deshmukh,
Age: 31 years, Occ: Advocate

All R/o. Plot no.23, Sector F.N.S.-1,
North of 12th Scheme, Shivaji Nagar,
Aurangabad.

APPLICANTS

VERSUS

1. State of Maharashtra,
Through Police Station Officer,
Police Station Mukundwadi,
Aurangabad.
2. Bhanudas s/o. Pandharinath Devkar,
Plot no.16, Renuka-Nagar, Garkheda,
Aurangabad
C/o. Garware Polyster Pvt.Limited,
M.I.D.C. Waluj.

RESPONDENTS

...
Mr.Rupesh A. Jaiswal, Advocate for the
applicants.

Mr.P.G.Borade, APP for the Respondent/State

...

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

Date: 26.04.2017.

ORDER: (Per S.S.Shinde, J.):

1. This Application is filed with a prayer to quash the First Information Report vide Crime No.185/2017 registered with Mukundwadi Police Station, Aurangabad, for the offences punishable under Sections 341, 354, 323, 506, 504, 34 of the Indian Penal Code.

2. The learned counsel appearing for the applicants invites our attention to the allegations in the FIR and submits that, even if the allegations in the FIR are taken at its face value and read in its entirety, an alleged offences are not disclosed. It is submitted that, there are no specific allegations attributing specific overt act to the applicants, and therefore, the FIR deserves to be quashed. It is submitted that,

the applicants have filed suit for defamation against the informant, and therefore, to take vengeance against the present applicants, the FIR is lodged. There is inordinate delay in lodging the FIR. An ingredients of the alleged offences are not attracted even upon reading the entire allegations in the FIR, and therefore, continuation of the proceedings on the basis of the said FIR would amount to abuse of process of law. The learned counsel appearing for the applicants invites our attention to the averments in the application, grounds taken therein, annexures thereto and submits that, the application deserves consideration.

3. The learned APP appearing for the respondent-State invites our attention to the allegations in the FIR and submits that, there is series of incidents stated in the FIR, which would clearly disclose alleged offences, and therefore, it is necessary to

carry out further investigation. It is submitted that, the statements of the witnesses have been recorded. The witnesses have supported the allegations in the FIR and their statements can be tested only during trial. It is submitted that, in view of the exposition of law in the case of **Bhaskar Lal Sharma and another Vs. Monica and others¹**, the facts, as alleged, will have to be proved which only be done in the course of a regular trial. Appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it.

4. We have given anxious consideration to the rival submissions of the learned counsel appearing for the applicants and the learned APP appearing for respondent-State.

¹ [2014] 3 SCC 383

With their able assistance, we have carefully perused the averments in the application, grounds taken therein and the annexures thereto. Upon careful perusal of the allegations in the FIR, there are specific incidents dated 29th July, 2014, 6th August, 2014, 9th November, 2015 and 14th December, 2015. It further appears that, it is alleged in the FIR that, as a result of continuous harassment at the hands of the applicants, daughter of the informant died. It is also mentioned in the FIR that, the daughter of the informant namely Vaidehi died on 4th August, 2016. If the allegations in the FIR are read carefully, an ingredients of the alleged offences are disclosed. Therefore, keeping in view the observations of the Supreme Court in para 11 of the judgment in the case of ***Bhaskar Lal Sharma and another [supra]*** the facts, as alleged, will have to be proved which only be done in the course of

a regular trial. Appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. Therefore, we are not inclined to entertain this application for quashing the FIR.

5. After completion of the investigation, depending upon outcome of the said investigation, it will be open for the applicants to avail of an appropriate remedy as available in law. At this stage when the investigation is in progress, it is not desirable to quash the FIR. Hence, this Application stands rejected.

6. An observations made herein above are *prima facie* in nature and this order will not preclude the applicants from availing of an appropriate remedy in the event of filing

the charge-sheet by the Investigating Officer.

7. At this stage, the learned counsel appearing for the applicants makes a oral prayer for continuation of the ad-interim relief for further 6 weeks. The prayer is vehemently opposed by the learned APP appearing for the respondent – State.

8. Since we have rejected the application, it is not proper to restrain the Investigation Officer from continuing further investigation. Hence, the prayer for continuation of ad-interim relief for further 6 weeks stands rejected.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE