

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

CRIMINAL APPLICATION NO.2136 OF 2017

1. Shrikrushan s/o.Kondiba Ingole,
Age: 32 Years, Occ. Labour.
2. Kondiba s/o. Tolaram Ingole,
Age: Major, Occ. Labour.
3. Shila w/o. Kondiba Ingole,
Age: Major, Occ. Household.
4. Shobha Bandu Barkul,
Age: Major, Occ. Household.

Applicant Nos.1 to 4
R/o. Ashok Nagar, Rural Beed,
Tq. & Dist. Beed.

5. Sunanda Sudhakar Warekar,
Age: Major, Occ. Household,
R/o.Mhada Shrinivas Mill
Lower Parel, Mumbai
6. Sudhakar Raghu Warekar,
Age: Major, Occ. Service,
R/o. as above.

APPLICANTS

VERSUS

1. The State of Maharashtra
Through Rural Police Station,
Beed, Tq. & Dist. Beed.
2. Rekha w/o.Shrikrushan Ingole,
Age: Major, Occ. Household,
R/o. Kuttewadi, Beed,
Tq. & Dist. Beed.

RESPONDENTS

...
Mr.Nanabhau R.Thorat, Advocate for the
applicants
Mr.Shashibhushan P.Deshmukh, APP for the
Respondent / State
Mr.R.N.Jain, Advocate holding for
Mr.D.S.Bagul, Advocate for respondent no.2.
...

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

Reserved on : 14.11.2017
Pronounced on : 16.11.2017

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

1] Heard.

2] Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

3] This Application is filed praying
therein to quash and set aside the First
Information Report bearing Crime No.04/2017
dated 07.01.2017, registered at Rural Police
Station, Beed for the offences punishable
under Sections 498-A, 323, 504, 506 r/w.34 of
the IPC.

4] The learned counsel appearing for the applicants invites our attention to the allegations in the First Information Report [for short 'FIR'] and submits that even if the allegations in the FIR are taken at its face value and read in its entirety, the alleged offences have not been disclosed. He further submits that the allegations in respect of demand of Rs.40,000/- for the purpose of taking bore well in the field, are unacceptable since the applicants are landless person and the question of demanding amount for the purpose of taking bore well in the field, are totally false. It is submitted that the marriage between respondent no.2 and applicant no.1 was solemnized on 24th March, 2006. From the said wedlock, applicant no.1 and respondent no.2 are blessed with two children, namely, Meghraj and Pruthviraj, who are aged about 8 years and 6 years respectively. It is submitted that as alleged

in the FIR respondent no.2 left the matrimonial home in the year 2014, and the FIR has been lodged belatedly on 7th January, 2017. It is submitted that applicant nos.5 and 6 are residing at Mumbai since the year 2007. Applicant no.6 is the employee in Shikre Construction Tech Pvt. Ltd. Company. It is submitted that applicant no.1 has already initiated proceedings praying therein for restitution of conjugal rights and to counter blast the said proceedings, the FIR with false allegations has been lodged by respondent no.2. It is submitted that the applicants tried to settle the matter before the Women Grievance Cell at Beed and applicant no.1 is ready to cohabit with respondent no.2, however, respondent no.2 did not allow to materialize such settlement.

5] On the other hand, the learned APP appearing for the respondent—State and learned counsel appearing for respondent no.2

submit that the allegations in the FIR clearly discloses the alleged offences. There was ill-treatment and harassment at the hands of the applicants, and therefore, the allegations in the FIR need further investigation. It is submitted that applicant nos.5 and 6 are residing at the same village where the matrimonial house is situate. The learned APP invites our attention to the investigation papers and submits that the application may be rejected.

6] We have given careful consideration to the submissions of the learned counsel appearing for the applicants, the learned APP appearing for the respondent-State and the learned counsel appearing for respondent no.2. With their able assistance, we have perused the averments in the application, annexures thereto, investigation papers and in particular the allegations in the FIR. So far as applicant no.1 Shrikrushan Kondiba

Ingole i.e. husband of respondent no.2 is concerned, it is alleged against him that in the year 2014 he gave fist and kick blows, abused respondent no.2, assaulted her and she was driven out from the matrimonial house, and thereafter, respondent no.2 started residing with her two children at her parental house. Since the said allegations *prima facie* discloses the alleged offences, we are not inclined to quash the FIR qua applicant no.1, hence his application stands rejected.

7] Upon careful perusal of the contents of the FIR, it appears that, respondent no.2 was driven out from the matrimonial house by her husband in the month of January, 2014 and since then she started residing in her parent's house. However, the FIR has been lodged on 7th January, 2017. So far as applicant nos.2 to 6 are concerned, there are general allegations without attributing overt

act qua each of the applicants i.e. applicant nos.2 to 6. There are allegations of demand of Rs.40,000/-. However, no any specific date, time or incident has been alleged as against applicant nos.2 to 6. We have also carefully perused the investigation papers, and we do not find any material showing specific incident or specific allegations in relation to some specific incident as against applicant nos.2 to 6. It further appears that, the applicants also made attempt to settle the matter with respondent no.2 and to that effect some exercise was made before the Women Grievance Cell. Therefore, upon perusal of the allegations in the FIR there are casual references to applicant nos.2 to 6. As already observed, the allegations are vague and the FIR has been lodged belatedly on 7th January, 2017, though the allegations as stated in the FIR itself relate back to the year 2007 to 2014.

8] We find considerable force in the argument of the learned counsel appearing for the applicants. The learned counsel appearing for the applicants placed reliance upon the case of ***Preeti Gupta and another Vs. State of Jharkhand and another***¹.

9] The Supreme Court in the case of ***Geeta Mehrotra and another Vs. State of Uttar Pradesh and another***² 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 judgment of the Supreme Court in the case of ***G.V.Rao Vs.L.H.V. Prasad***³ wherein in para 12 it is observed thus:

"12. There has been an outburst of

1 [2010] 7 SCC 667

2 (2012) 10 SCC 741

3 (2000) 3 SCC 693

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 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**⁴ 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 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.

4 AIR 1992 SC 604

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] The case of applicant nos.2 to 6 is covered under category nos.1 and 5 of the afore-mentioned categories.

12] In the light of above, the First Information Report bearing Crime No.04/2017 registered at Rural Police Station, Beed for the offences punishable under Sections 498-A, 323, 504, 506 r/w.34 of the IPC stands quashed and set aside to the extent of

applicant nos.2 to 6 only. The application to the extent of applicant no.1 stands rejected.

13] The application is partly allowed.
Rule is made absolute to above extent.

[MANGESH S.PATIL]
JUDGE

[S.S.SHINDE]
JUDGE

DDC