

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

CRIMINAL APPLICATION NO.2183 OF 2017

1. Sow. Sumanbai w/o. Vijay Chinchvankar,
Age: 66 years, Occ: Retired HM,
R/o. Rajgurunagar [Khed],
Dist. Pune.
2. Gajendra s/o. Vijay Chinchwankar,
Age: 38 years, Occ: Private Service,
R/o. D-1, Flat No.2, Dnyanganga Society,
Vadgaon [Bk], Pune.
[His application rejected as
per Court's order dtd.02.05.2017.]

APPLICANTS

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Itwara Police Station,
Nanded, Tq. & Dist. Nanded.
2. Sow. Ishwari w/o. Gajendra Chinchwankar,
Age: 31 Years, Occ: Household,
R/o. C/o. Sudhakar Rao Ambulgekar,
[Nandedkar] Pathak Galli,
Near Mittika Sher, Nanded,
Tq. & Dist. Nanded.

RESPONDENTS

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Mr.P.G.Godhamgaonkar, Advocate for the
applicants
Mr.M.M.Nerlikar, APP for the Respondent/
State
Mr.R.A.Jaiswal, Advocate holding for
Mr.N.S.Ghanekar, Advocate for respondent
no.2.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 13.07.2017
Pronounced on : 25.07.2017

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 for quashing and setting aside the First Information Report bearing Crime No.143/2016 registered at Itwara Police Station, Nanded, dated 13th October, 2016, for the offences punishable under Sections 498 [A], 323, 504, 506 r/w.34 of the Indian Penal Code, and additional offences included in the said Crime pursuant to the supplementary statement for the offence punishable under Section 354 [A], [1], [2], [3], 354 [B], 354 [C], 354[D], 376 [D], 376 [E], 377 and 511 of the Indian Penal Code.

4. The learned counsel appearing for the applicants made following submissions:

5. The additional statement and the FIR/complaint lodged by respondent no.2-informant against the applicants is nothing but a concocted version of false incident having no grain of truth. The allegation set out in the FIR, and supplementary statements have been done to harass the applicants on the false allegation. The allegation set out in the FIR, and the additional statement are so absurd, inherently, improbable that no prudent man can reach to such conclusion. The allegations set out by respondent no.2 is outcome of instigation of the parent and brother with *mala fide* intention and *ulterior motive* to meet lust of applicant no.2 wherein the informant is tool in their hand. The circumstances that the father is not allowed to meet children is an indication of *mala fide* intention and deliberate harassment

caused by respondent no.2 on fictitious grounds. The FIR and allegations set out in the complaint and supplementary statement is on the face of the fact is a white lie. The circumstances do not disclose commission of any offence, but it reveals counter revenge on the instigation of the brother-in-law of applicant no.2 i.e. Narayan Sudhakar Nandedkar, through his sister.

6. The FIR lodged by applicant no.2 at Singhgad Police Station, Pune, it reveals that the FIR of respondent no.2 is an afterthought. Besides that, the delay is unexplained in respect of alleged ill-treatment for long period. Applicant no.2 is a responsible father with commendable record of his service career. Applicant no.2 love his family i.e. wife and children. He has given his best to the family. Taken wife and daughters to Singapore for Diwali Celebration. Despite this, he was regularly

taking family for outing. He has taken care of his children education. There was no ground all of a sudden to make such vague allegation without logic. The Hon'ble High Court and the Hon'ble Apex Court has time and again said that close relatives of husband should not be roped unnecessarily. The informant supplementary statement, and the review of entire circumstances only lead to a conclusion that *prima facie*, no offence is constituted.

7. On the other hand, the learned APP appearing for the respondent – State relying upon the investigation papers, and the allegations in the supplementary statement of respondent no.2 recorded on 22nd January, 2017, submits that the alleged offences are clearly disclosed, and therefore, needs further investigation.

8. We have given careful consideration to the submissions of the learned counsel appearing for the applicants, and the learned APP appearing for the respondent—State. With their able assistance, perused the allegations in the FIR, and also the investigation papers. We have carefully perused the contents of the FIR registered on 13th October, 2016, by respondent no.2. In the entire FIR, there is no single allegation against applicant no.1 Sumanbai Vijay Chinchvankar, who is mother-in-law of respondent no.2. It is only in the supplementary statement of respondent no.2 recorded on 22nd January, 2017, there are general allegations made against applicant no.1. It is relevant to mention that the FIR was lodged on 13th October, 2016, and belatedly, on 22nd January, 2017, the supplementary statement of respondent no.2 was recorded, and in the said statement first

time applicant no.1 Sumanbai Vijay Chinchvankar is implicated. Upon careful perusal of the contents of the supplementary statement, there are general allegations against applicant no.1; there are no specific instances / incidents are quoted nor any date is mentioned of such alleged ill-treatment or harassment. In that view of the matter, we are of the considered view that, so far applicant no.1 Sumanbai Vijay Chinchvankar is concerned, the FIR deserves to be quashed.

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 of 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 wherein it is held that, in those categories of the case which are mentioned in para 108 of said judgment, the High 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

3 AIR 1992 SC 604

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. The case of applicant no.1 Sumanbai Vijay Chinchvankar is covered in category

no.1 and 5 of the afore-stated categories. Therefore, for the reasons afore-stated, the impugned First Information Report bearing Crime No.143/2016, registered at Itwara Police Station, Nanded, to the extent of applicant no.1 Sumanbai Vijay Chinchvankar, is quashed and set aside.

12. So far applicant no.2—Gajendra Vijay Chinchwankar is concerned, his application is already rejected on 2nd May, 2017.

13. The Criminal Application is partly allowed. Rule is made absolute on above terms. Application stands disposed of accordingly.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE