

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPLICATION NO. 3025 OF 2016**

1. Sayyad Yusuf Sayyad Jan Mohammed
2. Aktari Begam Sayyad Yusuf
3. Sayyad Sajed Sayyad Yusuf
4. Sayyad Majid Sayyad Yusuf
5. Tabassum Begam Shaikh Shakil
6. Sayyad Gulam Sayyad Jan Mohammed

..APPLICANTS**-VERSUS-**

1. The State of Maharashtra
2. Reshma Syed Hamed Syed

..RESPONDENTS**...**

Advocate for Applicants : Mr. V.A. Bagadiya
APP for Respondent/State : Mr. S.Y. Mahajan
Advocate for respondent no.2 : Mr.A.T. Patel

...**CORAM : S.S. SHINDE & K.K. SONAWANE, JJ.****Dated: February 08, 2017****...****PER COURT :-**

Rule. Rule made returnable forthwith

and heard finally with the consent of the learned counsel appearing for the respective parties.

2. The learned counsel appearing for the applicants submit that, even if the allegations in the First Information Report are taken at its face value and read in its entirety, the alleged offences have not been disclosed. The allegations made in the First Information Report are omnibus and without mentioning any specific date or incident. He further submits that applicant nos. 1 to 5 though are residing in Khultabad Tahsil but at different places and villages. He further submits that, applicant no.6 is residing at Bidkin which situate at Aurangabad tahsil. He submits that, the allegations in the First Information Report are inherently improbable and no prudent person would believe on such allegations. He further submits that, even if the charge-sheet and its accompaniments are taken into consideration, the prosecution agency has not collected the sufficient material, and therefore, no trial can be proceeded further on the basis of such material.

3. On the other hand, the learned A.P.P., relying upon the charge-sheet and its accompaniments, submits that the allegations in the First Information Report gets support from the statements of other witnesses. The charge-sheet is already filed, and therefore, this Court may not entertain this application.

4. The learned counsel appearing for respondent no.2, relying upon the allegations in the First Information Report and also the statements of other witnesses recorded during the course of investigation, submits that, the alleged offences have been disclosed and the Investigating Officer has collected sufficient material, on the basis of which the trial can proceed further.

5. We have given careful consideration to the submissions advanced by the learned counsel appearing for the applicants, learned A.P.P. and the learned counsel appearing for respondent no.2. With their able assistance, we have perused the grounds taken in the application, annexures thereto, the contents of the First Information Report and the statements of the witnesses recorded during

the course of investigation.

6. Upon careful perusal of the allegations in the First Information Report, it is abundantly clear that no specific incident is quoted. No specific role or overt act has been attributed to each of the applicants and there is no specific date mentioned in the First Information Report. On specific query put to the learned counsel appearing for respondent no.2 that as to when respondent no.2 left the matrimonial home, he fairly states that, respondent no.2 left the matrimonial home after one month from the date of marriage i.e. on 24th October, 2014. The F.I.R. is lodged on 15th May, 2016. There are no plausible reason or explanation given about the inordinate delay caused in filing the First Information Report. Though respondent no.2 made feeble attempt to state that, the parties were referred to Grievance Committee, that cannot be a ground or reason to file the First Information Report belatedly.

7. The Supreme Court in the case of

State of Haryana V/s Bhajan Lal¹ held that,

1AIR 1992 SC 604

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.

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.*

The present case is covered in category Nos.1, 2 and 5 of the aforementioned categories.

8. 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 of the

² (2012) 10 SCC 741

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 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

3 (2000) 3 SCC 693

parties lose their 'young' days in chasing their 'cases' in different courts."

9. In that view of the matter, in our considered view, the further continuation of proceedings in R.C.C. No. 105/2016 based upon Crime No. 176/2016 registered with Khultabad Police Station, Aurangabad for the offences under section 498-A, 323, 504, 506 r/w section 34 of the Indian Penal Code would be abuse of process of law and would be exercise in futility since we find that the prosecution has not collected sufficient material/evidence against the applicants.

10. For the reasons aforesaid, we are inclined to allow the present application. Accordingly the application is allowed in terms of prayer clause `B'. Rule made absolute accordingly.

(K.K. SONAWANE, J.)

(S.S. SHINDE, J.)

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