

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

CRIMINAL APPLICATION NO.2939 OF 2017

1. Shaikh Hameduddin s/o.Shaikh
Hamid Taba,
Age: 28 years, Occ: Private Service,
R/o.S.T.Colony, Fazilpura,
Aurangabad.
 2. Shaikh Hamid Taba s/o.Fasiuddin,
Age: 60 years, Occ: Business,
R/o. as above.
 3. Noorjaha w/o.Shaikh Hamid Taba,
Age: 50 years, Occ: Household,
R/o. as above.
 4. Seema Sultana w/o.Nazir Khan,
Age : 35 years, Occ: Household,
R/o. Bandra, Mumbai.
 5. Nazema Sultana d/o.Shaikh Hamid Taba,
Age: 28 years, Occ: Student,
R/o.S.T.Colony, Fazilpura,
Aurangabad.
 6. Mohammad Parvez s/o.Shaikh Hamid Taba,
Age: 25 Years, Occ: Student,
R/o. as above.
- APPLICANTS**

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
City Chowk Police Station,
Aurangabad.

2. Afreenbano w/o.Shaikh Hameduddin,
Age: 23 years, Occ: Household,
C/o.Saleem Patel, Patel Nagar,
Naregaon, MIDC – CIDCO,
Aurangabad.

RESPONDENTS

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Mr.Moinuddin N.Shaikh, Advocate holding for
Mr.S.S.Kazi, Advocate for the applicants.
Mrs.V.S.Chaudhari, APP for the
Respondent/State
Smt.Zainab M.Surti Wagh [Appointed] a/w
Mr.M.M.Khan, Advocate for respondent no.2.

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**CORAM: S.S.SHINDE &
A.M.DHAHALE, JJ.**

Reserved on : 13.12.2017
Pronounced on : 18.12.2017

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

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

2] This Application is filed, praying
therein to quash the First Information Report
bearing Crime No.0188/2017 registered at City
Chowk Police Station, Aurangabad, for the
offences punishable under Sections 498A, 323,
504, 506 r/w.34 of the Indian Penal Code and
Sections 3 and 4 of the Dowry Act, 1961.

3] In view of the statement made by the learned counsel appearing for the applicants on 23.11.2017 before this Court, already application to the extent of applicant nos.1 to 3 has been dismissed as not pressed. Therefore, this Application survives only in respect of applicant nos.4 to 6.

4] Learned counsel appearing for the applicants submits that, applicant no.4 Seema Sultana w/o.Nazir Khan is residing at Bandra, Mumbai. He invites our attention to the rejoinder to the affidavit-in-reply filed on behalf of respondent no.2, and submits that the copies of the documents annexed with the said rejoinder show that, applicant no.4 is a member of the Siddhivinayak SRA Co-operative Housing Society at Bandra, Mumbai, and therefore, the allegations in the First Information Report [for short 'FIR'] in respect of involvement of applicant no.4 are

inherently improbable. The allegations are vague, general in nature and the alleged offences are not disclosed as against applicant no.4. It is further submitted that, applicant nos.5 and 6 are the students, and they are prosecuting their studies, and therefore, their involvement in the alleged offences is completely ruled out. It is submitted that, the allegations as against applicant nos.5 and 6 are vague, general and alleged offences are not disclosed, and therefore, the FIR deserves to be quashed. He further invites our attention to the averments in the Application, grounds taken therein, annexures thereto and prays that the application may be allowed.

5] On the other hand, learned APP appearing for respondent-State and learned counsel appearing for respondent no.2, relying upon the investigation papers and also affidavit-in-reply filed by respondent

no.2, jointly submit that, careful perusal of the allegations in the FIR, the specific overt act is attributed qua applicant no.4. The role of applicant no.4, in causing harassment and giving ill-treatment to respondent no.2, was comparatively greater vis-a-vis other accused, and she is residing at Aurangabad, and not at Mumbai, as contended by the learned counsel appearing for the applicants. It is submitted that, all the accused without disclosing that the husband of respondent no.2, namely Shaikh Hameduddin Shaikh Hamid Taba, is already married, cheated respondent no.2, and solemnized his second marriage with her. It is submitted that, the allegations in the FIR, will have to be read as it is, and appreciation of such allegations, even in a summary manner, is not permissible. It is submitted that, even the statements of the independent witnesses, who are residing

nearby the house of the accused i.e. matrimonial house, have been recorded by the Investigating Officer.

6] We have given careful consideration to the submissions of the learned counsel appearing for the applicants, learned APP appearing for respondent-State, and learned counsel appearing for respondent no.2. With their able assistance, we have perused the averments in the Application, grounds taken therein and annexures thereto, affidavit-in-reply filed by respondent no.2, and also the rejoinder to the affidavit in reply. Upon careful perusal of the allegations in the FIR, so far as applicant no.4 is concerned, there are allegations that she along with her mother assaulted respondent no.2. There are allegations that, there was no disclosure about first marriage of applicant no.1, Shaikh Hameduddin Shaikh Hamid Taba, to the informant or her parents. So far as applicant

no.4 is concerned, there are specific allegations against her in the FIR. The contention of learned counsel appearing for the applicants that, she is residing at Mumbai, is not supported by placing on record the documents of impeccable character. Upon careful perusal of the statements of the witnesses, who are residing in the neighbourhood of the applicants; their version lends support to the allegations in the FIR, inasmuch as, they have stated about frequent quarrel/quarrels in the matrimonial home. Therefore, the application of applicant no.4 deserves no consideration. Hence, the application to the extent of applicant no.4 stands rejected.

7] So far as applicant nos.5 and 6 are concerned, it is not in dispute that, they are the students and prosecuting their studies. If the allegations in the FIR as against them are taken in its entirety, there

is no any specific overt act attributed qua them. There are vague and general allegations against them. It is stated in the affidavit-in-reply by respondent no.2 that applicant nos.5 and 6 though prosecuting their studies, never attended the college, cannot be accepted as gospel truth. In that view of the matter, so far as applicant nos.5 Nazema Sultana d/o.Shaikh Hamid Taba and applicant no.6 Mohammad Parvez s/o.Shaikh Hamid Taba are concerned, if the investigation is allowed to be continued against them, it would unnecessarily cause hindrance in their studies and also would affect on their educational career, when there are no any specific overt acts or role is attributed to them.

8] The Supreme Court in the case of ***Geeta Mehrotra and another Vs. State of Uttar Pradesh and another***¹ in the facts of that

1 (2012) 10 SCC 741

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 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

2 (2000) 3 SCC 693

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."

9] The Supreme Court in the case of **State of Haryana V/s Bhajan Lal**³ 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. Para 108 of the said judgment reads as under:

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

3 AIR 1992 SC 604

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.*

10] The case of applicant nos.5 and 6 is squarely covered under category nos.1 and 2 of the afore-stated categories from the judgment in the case of *State of Haryana V/s Bhajan Lal* [cited supra].

11] Keeping in view the above-mentioned reported judgments in the cases of **Geeta Mehrotra and another [supra]** and **State of Haryana V/s Bhajan Lal [supra]**, and in the peculiar facts and circumstances of this case, we are inclined to allow this application to the extent of applicant nos.5 and 6. Hence, the application to the extent of applicant nos.5 and 6 is allowed. First Information Report bearing Crime

No.0188/2017, registered at City Chowk Police Station, Aurangabad, for the offences punishable under Sections 498-A, 323, 504, 506 r/w.34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Act, stands quashed to the extent of applicant nos.5 and 6. Rule is made absolute on above terms.

12] The application to the extent of applicant no.4 stands rejected.

13] The observations made herein above are *prima facie* in nature and confined to the adjudication of the present application only. The rejection of this application would not debar applicant no.4 from availing of an appropriate remedy as available in law.

14] Since, Smt. Zainab M. Surti Wagh, the learned counsel is appointed to prosecute the cause of respondent no.2, she would be

entitled for the fees, as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

[A.M.DHAVALÉ]
JUDGE

[S.S.SHINDE]
JUDGE

DDC