

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

924 CRIMINAL APPLICATION NO. 3479 OF 2016

PRASHANT S/O SANJAY ZIRPE AND OTHERS
VERSUS
SUNETRA W/O PRASHANT ZIRPE ANR

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Advocate for Applicants : Mr. Yogesh Bobade h/f Mr. N.S. Shah

APP for Respondents: Mr. S.Y. Mahajan

Advocate for Respondent No. 1 : Mr. S.K. Kadam

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

DATE : 5th April, 2017.

PER COURT:

1] Learned counsel appearing for the applicants, on instructions, seeks permission to withdraw the application of applicant Nos. 1 to 5, with liberty to file appropriate remedy in the event of filing charge sheet by the I.O.

2] The application, qua applicant Nos. 1 to 5, is dismissed as withdrawn with liberty as prayed for,

3] So far as the applicant No.6 is concerned, learned counsel for the applicant invites our attention to the fact that the applicant No.6 is residing at Mumbai, who is the married sister of applicant NO.1. He further submits that there are no specific allegations or overt acts attributed to applicant No.6. He relies on judgment of the Apex Court in the matter of "**State of Haryana V/s Bhajan Lal**" [AIR 1992 SC 604] and in particular, para. 107, and submits that the case of the applicant NO.6 is covered under category No.5.

4] On the other hand, learned APP for the State, and counsel appearing for respondent No.1 relying upon the investigation papers submit that pursuant to the registration of FIR, investigation is carried out and Investigation Officer has collected sufficient material showing involvement of the applicants. Therefore, they submit that the application may be dismissed.

5] Upon hearing the counsel for parties, we are of the opinion that since the applicant No.6 is the married sister of applicant No.1 Prashant, the husband of respondent No.1, the allegations made against her are inherently improbable, inasmuch as, no one would believe that she specially came from Mumbai to harass or mentally torture the respondent No.1.

6] The Supreme Court in the case of "**State of Haryana V/s Bhajan Lal**" [AIR 1992 SC 604] 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 extra-ordinary 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 channelized 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.*

7] Keeping in view the judgment of the Apex Court in the case of Bhajanlal (supra) and in particular, the categories mentioned in para.107, we are of the opinion that the case of the applicant No.6 falls under Category No.5.

8] In the light of above, the application is allowed in terms of prayer clause (A) to the extent of applicant No.6. Same stands disposed. The observations made hereinabove are prima facie in nature and made only for the purpose of adjudication of the present application.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-