

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

CRIMINAL APPLICATION NO. 3231 OF 2017

1. Raosaheb S/o Narhari Lokhande
Age : 70 years, Occ : Agri.,
R/o Bhete Galli, Wadwal (Nagnath),
Tq. Chakur, Dist. Latur.
2. Lalitabai W/o Raosaheb Lokhande
Age : 70 years, Occ : Household,
R/o Bhete Galli, Wadwal (Nagnath),
Tq. Chakur, Dist. Latur.
3. Vishwanath S/o Vithoba Jadhav
Age : 68 years, Occ : Agri.,
R/o Yellam Galli Va Lohar Galli,
Janwal, Tq. Chakur, Dist. Latur.
4. Yamunabai W/o Vishwanath Jadhav
Age : 65 years, Occ : Household,
R/o Yellam Galli Va Lohar Galli,
Janwal, Tq. Chakur, Dist. Latur.
5. Mukund S/o Ramchandra Suryawanshi
Age : 44 years, Occ : Agri.,
R/o Phulari Galli, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
6. Anusaya W/o Mukund Suryawanshi
Age : 37 years, Occ : Household,
R/o Phulari Galli, Ahmedpur,
Tq. Ahmedpur, Dist. Latur.
7. Bharat S/o Namdeo Jadhav
Age : 71 years, Occ : Agri.,
R/o Anandwadi, Post. Kharola,
Tq. Renapur, Dist. Latur.

8. Mathurabai W/o Gangaram Suryawanshi
Age : 75 years, Occ : Household,
R/o Shend, Tq. Shirur Anantpal,
Dist. Latur.

..APPLICANTS

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Police Station, Chakur,
Tq. Chakur, Dist. Latur.
2. Jyoti W/o Balasaheb Jadhav
Age : 22 years, Occ : Household,
C/o Laxman Uttamrao Surwase
R/o Pohregaoon, Tq. Renapur,
Dist. Latur.

..RESPONDENTS

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Mr.J.R. Patil, Advocate for the Applicants.
Mrs. P.V. Diggikar, APP for Respondent/State

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

**RESERVED ON : 10.10.2017
PRONOUNCED ON : 13.10.2017**

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

Inspite of service on Respondent
No.2 on couple of occasions, including the
service of notice for final disposal, none
appears for respondent no.2.

2. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the applicants and the learned A.P.P. appearing for the Respondent - State.

3. The background facts for filing the present application, as disclosed in the memo of application, in brief are as under :

The applicants have been arrayed as accused by Respondent No.2, in F.I.R. No. 14/2017 registered on 17.01.2017 with Police Station, Chakur, Tq. Chakur, Dist. Latur for the offences punishable under Sections 498-A, 323, 504, 506 read with section 34 of the Indian Penal Code. It is the case of the applicants that, the applicants are the distinct relatives of Respondent No.2 and residing at distinct places, and are roped in false and frivolous

F.I.R. filed by Respondent No.2 with a view to harass the relatives of the husband. It is the case of the applicants that, on 5th May, 2015, the marriage of Respondent No.2 was solemnized with one Balasaheb Laxman Jadhav, resident of Janwal, Tq. Chakur, Dist. Latur, at Pohregaoon, Tq. Renapur, Dist. Latur. After the marriage, Respondent No.2 cohabited for few days at her matrimonial house and thereafter she left the matrimonial house and started residing with her parents at Pohregaoon, Tq. Renapur, Dist. Latur and now she is residing with her parents. It is the case of the applicants that, Respondent No.2 directly on 17th January, 2017 filed F.I.R. with Police Station Chakur alleging that, she was illtreated at the hands of her husband, in-laws and these applicants on account of demand of Rs.7,00,000/- for purchase of Auto and to pay the loan obtained for construction of house. It is the case of the applicants

that, the applicants are distinct relatives and are residing at their houses at distinct places. They have no occasion to visit the house of Respondent No.2 and ill-treat her. The allegations made in the F.I.R. are general and vague and made only to harass the husband and his relatives. There is unexplained delay in respect of belated lodging of the F.I.R., and F.I.R. is outcome of vindictive approach on the part of Respondent No.2. The F.I.R. against the applicants is nothing but an abuse of process of law. Hence this Application.

4. The learned counsel appearing for the applicants submits that, the applicants are residing separately and they are no way concerned with the domestic affairs of Respondent No.2 and her husband. It is submitted that, there are general allegations in the first information report as against

the applicants. Since the applicants are not residing in the matrimonial home, the allegations that, Respondent No.2 was driven out from the matrimonial home are not against the applicants. The learned counsel invites our attention to the copies of the Election Cards and Adhar Cards of the applicant nos. 1 to 7 and submits that, those documents will make it clear that, the applicants are residing separately.

5. On the other hand, learned A.P.P. appearing for respondent-State invites our attention to the contents of the F.I.R. and the investigation papers, and submits that, if the allegations in the first information report are perused, the ingredients of the alleged offences are disclosed against the applicants and needs further investigation. Therefore, she submits that, the application deserves to be rejected.

6. We have carefully perused the allegations in the first information report as against the applicants. There are general allegations without attributing any specific overt acts qua them. As stated in the application, applicant no.1 - Raosaheb Narhari Lokhande, aged 70 years is a maternal father-in-law of respondent No.2 and is residing separately at Wadwal, Tq. Chakur. Applicant no.2 - Lalitabai Raosaheb Lokhande, aged 70 years is a maternal mother-in-law of respondent no.2 and is residing separately. Applicant no.3 - Vishwanath Vithoba Jadhav, aged 68 years, is the brother of father-in-law of respondent no.2 and is residing separately. Applicant no.4 - Yemunabai Vishwanath Jadhav, aged 65 years, is the aunt of husband of Respondent No.2 and is residing separately at Janwal, Tq. Chakur. Applicant no.5 - Mukund Ramchandra Suryawanshi, aged 44

years is the husband of sister of husband of Respondent No.2 who is residing at different place. Applicant no.6 - Anusaya Mukund Suryawanshi, aged 37 years, is married sister of husband of Respondent No.2 and is residing separately. Applicant No.7 - Bharat Namdeo Jadhav, aged 71 years, is the cousin brother of husband of respondent no.2 and is residing separately and applicant no.8 - Mathurabai Gangaram Suraywanshi, aged 75 years is the aunt of husband of Respondent No.2 and is residing separately.

7. Even if the allegations in the first information report are taken at its face value and read in its entirety, there are no specific overt acts attributed as against the applicants. As already observed, applicant nos.1 to 4, 7 and 8 are the old aged persons and senior citizens. Applicant No.6 is married sister-in-law of Respondent No.2 and

applicant no.5 is her husband. In that view of the matter, keeping in view the peculiar facts and circumstances of this case, we are of the opinion that, when there are no specific allegations constituting any specific offence against the applicants, it is not desirable that, the applicants should face mental agony of trial. Apart from it, the further proceedings based upon general and vague allegations, would not result into conviction of the applicants. There are blink chances of conviction.

8. The Supreme Court in the case of ***State of Haryana V/s Bhajan Lal***¹ 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

1AIR 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.

The case of the present applicants would be covered in category no.1 of the aboveresferred categories.

9. The Supreme Court in another judgment 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 judgment of the Supreme Court in the case of **G.V.Rao Vs.L.H.V. Prasad**³ wherein para 12 it is observed thus:

² (2012) 10 SCC 741

³ (2000) 3 SCC 693

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

10. In the light of discussion hereinbefore, the application is allowed in terms of prayer clause `B' and the same stands disposed of. Rule made absolute accordingly. However, we make it clear that, the order passed today is confined only to the present applicants and the Investigating Officer is free to proceed further against the other accused, if any.

The observations made hereinabove are prima facie in nature and confined to the adjudication of the present application only and the trial Court shall not get influenced by the said observations during the trial in respect of co-accused.

[MANGESH S. PATIL]
JUDGE

[S.S.SHINDE]
JUDGE