

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPLICATION NO. 3367 OF 2017**

1. Krushna Raju Chavare
 2. Raju Rangnath Chavare
 3. Radhabai Raju Chavare
 4. Kushivarta Bhagwan Ugale
 5. Shashikala Nikhil Tanpure
 6. Ashamati @ Ashwini Bhausahab Shinde
- ..APPLICANTS**

-VERSUS-

The State of Maharashtra
and another

..RESPONDENTS

...
Advocate for applicants :Mr.S.J. Salunke
APP for Respondent/State:Mr.K.D. Munde

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CORAM: S.S. SHINDE & S.M. GAVHANE, JJ
Dated: July 25, 2017

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ORAL ORDER :

At the outset, the learned counsel appearing for the applicants, on instructions, seeks leave to withdraw the

application in respect of applicant no.1- Krushna Raju Chavare, applicant no.2- Raju Rangnath Chavare, applicant no.3 - Radhabai Raju Chavare and applicant no.5 - Shashikala Nikhil Tanpure.

2. Leave granted. The application stands dismissed as withdrawn so far as applicant nos.1, 2, 3 and 5 are concerned.

3. So far as applicant no.4 - Kushivarta Bhagwan Ugale and applicant no.6- Ashamati @ Ashwini Bhausaheb Shinde are concerned, the learned counsel appearing for the applicants submits that, even if the allegations in the first information report and the statements of the witnesses are carefully perused and read in its entirety an alleged offences are not disclosed and there are general allegations against the applicant nos. 4 and 6. Applicant no.4 - Kushivarta Ugale got married 10 years back and is residing at her matrimonial home. Applicant no.6 - Ashamati @ Ashwini Shinde got married 11 years back and is also residing at her matrimonial home. Therefore, the allegations made in the first information report qua them are inherently improbable and also general in

nature. Hence, the trial cannot proceed on the basis of such general allegations and inadequate material collected by the Investigating Officer during the course of an investigation.

4. On the other hand, the learned A.P.P. appearing for the respondent/State, relying upon the allegations in the first information report and also the statements of the witnesses recorded during the course of investigation, submits that, there are specific allegations against all the applicants and the same can be tested only during the course of trial.

5. The learned counsel appearing for respondent no.2 submits that, the allegations in the first information report and also the statements of the witnesses will have to be read as it is, and upon reading the said allegations in its entirety, if the alleged offences are disclosed, in that case, the material collected by the Investigating Officer during the course of an investigation will have to be tested during the course of trial. He submits that, the appreciation of the said allegations, even in a summary

manner is not desirable. Therefore, he submits that, since the first information report and statements of the witnesses spelt out the specific offences against the applicants, therefore, the prayer for quashing the first information report may not be favourably considered.

6. Upon hearing the learned counsel appearing for the applicants, learned A.P.P. appearing for the respondent/State and the learned counsel appearing for respondent no.2, and upon careful perusal of the allegations in the first information report and also the statements of the witnesses, it appears that, there are no specific instances or incidents are mentioned with specific date in the first information report. The allegations in the first information report are general in nature and would not attract the ingredients of the alleged offences qua applicant nos.4 and 6. It is not in dispute that, applicant no.4 - Kushivarta Ugale got married 10 years back and applicant no.6 - Ashamati @ Ashwini Shinde got married 11 years back.

7. The Supreme Court in the case of

State of Haryana V/s Bhajan Lal¹ 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 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.

¹AIR 1992 SC 604

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.*

8. Upon careful perusal of the allegations in the first information report and the statements of the witnesses, as against applicant nos.4 and 6, the allegations are general in nature. Therefore, the case of applicant nos.4 and 6 is squarely covered under category nos. 1 and 5 of the categories mentioned in the case of **State of Haryana (supra)**.

9. The Supreme Court in the case of **Geeta Mehrotra and another Vs. State of Uttar Pradesh and another**² in the facts of that

2 (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**³ wherein 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

3 (2000) 3 SCC 693

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. For the reasons aforesaid, the application in respect of applicant no.4 - Kushivarta Bhagwan Ugale and applicant no.6 - Ashamati @ Ashwini Bhausahab Shinde deserves to be allowed. Hence, we pass the following order :-

ORDER

(i) The application so far as applicant no.1-Krushna Raju Chavare, applicant no.2-Raju Rangnath Chavare, applicant no.3 - Radhabai Raju Chavare and applicant no.5 - Shashikala Nikhil Tanpure is concerned, the same stands dismissed as withdrawn.

(ii) The application so far as applicant no.4 - Kushivarta Bhagwan Ugale and applicant

no.6- Ashamati @ Ashwini Bhausaheb Shinde is concerned, the same stands allowed. The F.I.R. bearing C.R. No. 258/2017 registered with Police Station Taluka Jalna, Dist. Jalna dated 18th June, 2017 qua applicant nos.4 and 6 is quashed and set aside.

(iii) The application is partly allowed and the same stands disposed of accordingly.

(S.M. GAVHANE, J)

(S.S. SHINDE, J)

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