

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

CRIMINAL APPLICATION NO.3506 OF 2017

1. Gangadhar s/o.Nilkanthrao Ingle,
Age 53 years, Occu. Service as Engineer,
R/o.Rajura [B], Tq.Mukhed,
Dist. Nanded at present
Jaivan Nivas, Tilak Nagar,
Mukhed, Dist.Nanded.
2. Usha w/o.Gangadhar Ingle,
Age 47 years, Occu. Household,
R/o. as above.
3. Prashant Gangadhar Ingle,
Age 25 years, Occu. Education,
R/o. Athvan Building, Gat No.1165,
Near S.T.Colony, Wagholi,
Pune-412 207.
4. Pramod Gangadhar Ingle,
Age 22 years, Occu. Education,
R/o. as above.
5. Hanmant s/o.Nilkanth Ingle,
Age 44 years, Occu. Service as Teacher,
R/o. Manjula Nagar Bhokar,
Tq. Bhokar, Dist. Nanded.
6. Asha w/o.Hanmant Ingle,
Age 39 years, Occu. Service as Teacher,
R/o. as above.
7. Ramesh Shankarrao Deshmukh,
Age 45 years, Occu. Service as Teacher,
R/o. Bhaktapura Road, Degloor,
Tq. Degloor, Dist. Nanded.

8. Savita w/o. Ramesh Deshmukh,
Age 40 years, Occu. Household,
R/o. as above.
9. Shailesh Baburao Ullewar,
Age 26 years, Occu. Councillor
and Social Work,
R/o. as above.
10. Shankar Jakaji Jadhav [Bhutale],
Age 46 years, Occu. Service as Gangman,
R/o. Rajura [B], Tq.Mukhed,
Dist. Nanded.
11. Raosaheb Bhaurao Ingle Patil,
Age 75 years, Occu. Agril.
R/o. as above.

APPLICANTS**VERSUS**

1. The State of Maharashtra
Through Police Station Officer,
Police Station Shivajinagar, Latur,
Tq. and Dist. Latur.
2. Aishwarya d/o.Bharat Bora,
Age 23 years, Occu. Education,
R/o. Bhagyanagar,
Juna AUSA Road, Latur,
Tq. and Dist. Latur.

RESPONDENTS

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Mr.G.G.Kadam, Advocate for the applicants
Mrs.P.V.Diggikar, APP for the
Respondent/State

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

Reserved on : 05.12.2017
Pronounced on : 14.12.2017

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 and set aside the impugned First Information Report bearing Crime No.171/2017, registered at Police Station Shivajinagar, Latur, dated 16.06.2017, for the offences punishable under Sections 376, 377, 420, 406, 384, 204, 504, 506 r/w.34 of the Indian Penal Code and under Section 4 of POSCO Act and Section 66 [E] of the Information Technology Act.

3] The facts in a nutshell for filing the present Application are as under:

4] Respondent no.2 i.e. informant registered the First Information Report [for short 'FIR'] with the Shivajinagar Police Station, Latur, on 16th May, 2017, alleging that, she is resident of Bhagya Nagar, Shivajinagar, Latur. She resides with her parents. In the year 2007-08, she was in 9th Class, at that time one Shivaji Gangadhar Ingale was frequently trying to meet her. On 9th September, 2009, when the informant was alone at her home at about 2.00 to 2.30 p.m., Shivaji came to her house pretending to make a STD call. At that time, by seeing that she was alone at home, accused entered in the house, locked the door from inside and raped the informant. The informant due to said incident was under mental trauma and was scared and therefore did not tell the incident to the member of the family. The informant further alleged that, after the said incident, accused used to frequently

threaten and follow her. When the informant was in 10th Class, accused came to the house of the informant, and asked her parents, to solemnize the marriage of accused with the informant. But the parents of the informant told him that the informant is minor, and she wants to complete her education. In the year 2010, under threat to the informant the accused took her to one Sai Temple and tried to solemnize the marriage against her wish. At the relevant time, the informant refused to marry with accused but he threatened her with dire consequences.

5] It is further alleged that, on 04.06.2012, accused came with his friends namely Jeevan Bidgar, Vishnu Shinde, Vyankatesh Fartade, Satish Paul, Prashant Ingle and with some other friends, and all of them told her that, after she gets married with Shivaji, parents of the informant will accept both of them. It is alleged that, all

of them misguided her, and persuaded her to come to the temple of Vithal Rukhmini at Pati No.12, Latur. At that place, with the help of one bogus Pandit, the marriage of the informant and Shivaji was solemnized. After that, accused intimated about the solemnization of said marriage to the parents of the informant. The parents of the informant were left with no other option but to accept the marriage.

6] It is further alleged that, accused no.1 Shivaji told her that, he will take her to his house, when his education would get completed and till that time, she should live with her parents. It is further alleged that due to said promise, she consented to live with her parents till then. When her parents accepted the marriage of the informant with Shivaji, and they were about to arrange the reception, at Latur, accused no.1 and his relatives demanded an amount of Rs.3,50,000/-

to the parents of the informant. Thereafter, the informant with the help of one social worker Sujata Mane went to the house of accused no.1, however, parents of accused Shivaji did not accept her as a daughter in law. Therefore, on the basis of aforesaid allegations, at the instance of the informant, the FIR bearing Crime No.171/2017 has been registered, at Shivajinagar Police Station, Latur, on 16.06.2017, for the offence punishable under Sections 376, 377, 420, 406, 384, 204, 504, 506 r/w. 34 of the Indian Penal Code, by the informant.

7] Learned counsel appearing for the applicants submits that the applicants are innocent persons. They are working at different places. There is no any adverse remark against them in their entire career till the date. It is submitted that, the impugned FIR is false, concocted and based upon the imaginary story cooked with an

ulterior motive against the applicants. After perusal of the entire FIR, it reveals that, the allegations made in the FIR are general in nature. Though the FIR contains an allegations of alleged rape, but the said allegations at the most can be made against only one accused i.e. accused no.1. But, in the impugned FIR, the informant has made wild and reckless allegations, not only against the family members of accused no.1, but it includes their landlord as well as friends and neighbourers. After perusal of the impugned FIR, it implies that, the allegations relate back to the period from the year 2009 to 2016. Prior to lodging the present FIR, there was no complaint given against accused no.1 or against his family members earlier. After perusal of the FIR, it reveals that the main allegations are against only accused no.1, that he gave false promise of marriage to respondent no.2. Only on that

count the impugned FIR has been lodged. But in order to take vengeance the informant has made wild and reckless allegations against all the accused persons.

8] It is further submitted that, the allegations of commission of offence punishable under Section 376 of the Indian Penal Code, can be leveled only against accused no.1 with whom allegedly she was in love affair. In the impugned FIR, sweeping allegations have been made against the entire family of accused no.1. Applicant no.1 is the father of main accused Shivaji and he is serving as an Engineer in Zilla Parishad, Mukhed, District Nanded, and applicant no.2 is the mother of the main accused Shivaji. Applicant no.3 is brother of main accused, he has completed B.E. Civil and now he is studying in 2nd year of M.E. [Structural Engineering] course and residing at Pune. Applicant no.4 also resides with applicant

no.3 and studying in last year of B.E. [Civil] course. However, at present, he is looking forward to join the course of Architecture and Interior Designing. These applicants have no concern with the main accused Shivaji. Their names have been included just because they are the relatives of main accused Shivaji. Applicant nos.5 and 6 are the uncle and aunt of main accused; they have also no concern with the said incident. They have been implicated just because they are close relatives of the main accused. Applicant nos.5 and 6 reside at Bhokar, which is taluka place in Nanded District and more than 100 kilo meters away from Degloor, and 200 Kilo meters from Latur City. These applicants are serving as teachers in the school i.e. namely 'Freedom Fighter Shri Bhujangrao Patil Kinhalkar' Primary School at Ritha, Tq. Bhokar, Dist. Nanded. Needless to state that, they are

falsely implicated only on the count of being in relation with the main accused Shivaji. Applicant nos.7 and 8 are the landlords, whereas applicant nos.1 and 2 were living on rent. Applicant no.7 is working as a Teacher, whereas applicant no.8 is his wife doing house work. They are falsely implicated only on the count that, they are the landlords of the parents of main accused Shivaji. Applicant no.9 is the Councilor and Social Worker, and he had just tried to intervene and resolve the matter between the informant and main accused and on this count itself, he is being implicated falsely. Applicant nos.10 and 11 are distant relatives of the main accused Shivaji. Applicant no.10 is serving as a Gangman in Zilla Parishad, Mukhed and he is falsely implicated just because he is a friend of present applicant no.1. Whereas applicant no.11 is old aged person of 75 years. He resides in the very same village

where from the 'Ingale family' i.e. family members of accused no.1 hails. It is further submitted that, the present applicant nos.5, 6, 7 and 10 are in employment and they have no concern with the alleged incident. Their names have been included in the FIR just to harass them. Some of the applicants have certain documents, which would show that, they were not present at the place of alleged incident, but they were doing their regular work / performing duties. The said applicants are residing at the places, which are more than 100 kilo meters away from the place where accused no.1 ordinarily resides. Therefore, there is no possibility that, they would by traveling 100 kilo meters distance so as to commit the alleged offences. Therefore, learned counsel appearing for the applicants submits that, the application may be allowed.

9] On the other hand, learned APP

appearing for the respondent-State relying upon the allegations in the FIR submits that, *prima facie* the alleged offences are disclosed, and therefore, needs further investigation. He invites our attention to the statements of the witnesses and other material collected during the course of investigation.

10] Though, respondent no.2 is served by private service by the applicants and also by regular mode of service through registry, none appears for respondent no.2.

11] Upon careful perusal of the allegations in the FIR, *prima facie* the involvement of the accused Shivaji, applicant no.1 namely Gangadhar Nilkanthrao Ingle and applicant no.2 namely Usha Gangadhar Ingle has been clearly disclosed. Overt acts have been attributed to them. So far as applicant nos.3 and 4 i.e., brothers of Shivaji and

applicant nos.5 and 6, i.e. uncle and aunt of accused Shivaji and house owner one Ramesh Deshmukh i.e. applicant no.7 are concerned, as alleged in the FIR all of them used to call the informant as daughter in law, and brothers of Shivaji used to call her as sister in law, and they used to assure the informant that, as soon as education of Shivaji is complete, her marriage will be solemnized with said Shivaji. However, nature of such allegations is too general and vague without attributing any specific role or overt act / acts. So far as other applicant nos.8 to 11 are concerned, there are general allegations.

12] It clearly appears from the grounds taken in the application that, applicant nos. 5 and 6 are residing at Bhokar which is more than 100 kilo meters away from Degloor, and more than 200 kilo meters away from the Latur City. It further appears that, applicant nos.

7 and 8 are the owners of premises, wherein applicant nos.1 and 2, were residing on rent basis. Applicant no.7 is working as a Teacher, whereas applicant no.8 is his housewife. Applicant no.9 is the councilor and social worker, and he had just tried to intervene and resolve the dispute between the informant and main accused. Applicant nos.10 and 11 are distinct relatives of the main accused Shivaji. Applicant no.11 is old aged person of 75 years and residing in the same village. The applicants have placed on record proof of residence of applicant nos.5, 7 and 10 so as to demonstrate that they are residing at different places. The applicants have also placed on record relevant copies of the documents showing that applicant no.3 and applicant No.4 are prosecuting their studies at Pune, as it is evident from the careful perusal of the reports prepared by the Education Officer.

13] So far as accused Shivaji is concerned, sufficient material has been collected during the course of investigation by the Investigating Officer showing his involvement in the alleged offence. It is important to note that, the Investigating Officer has mentioned in his report made available for perusal by the APP that, nothing has transpired during the course of investigation about an involvement of other accused, so far as alleged offences punishable under Sections 376 and 377 of the IPC is concerned. It is also stated by the Investigating Officer in his report that, during the course of investigation, nothing has transpired so as to show or demonstrate that, the present applicants were present at the time of alleged marriage of accused Shivaji and the informant, on 4th June, 2012. No any witness has stated about the involvement or presence of the applicants.

However, it is mentioned that, it transpired during the course of investigation that, applicant no.1 Gangadhar and his wife Usha i.e. applicant no.2, visited the house of the parents of the informant on 7th January, 2016, and demanded Rs.10 lacs towards dowry and for arranging reception of marriage, and after discussion agreed to accept Rs.3,51,000/- from the parents of respondent no.2. To the above extent, the statement of the witnesses have been recorded by the Investigating Officer.

14] Therefore, in the light of the discussion in the foregoing paragraphs, we are of the opinion that, so far applicant no.1 Gangadhar Nilkanthrao Ingle and applicant no.2 Usha Gangadhar Ingle are concerned, their prayer for quashing the FIR cannot be entertained. However, so far as applicant nos.3 to 11 are concerned, there are general and vague allegations without

attributing specific overt acts qua them, and allegations against some of the applicants are inherently improbable since they are residing far away from the place of incident.

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

1 (2012) 10 SCC 741

2 (2000) 3 SCC 693

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."

16] The Supreme Court in the case of **State of Haryana V/s Bhajan Lal**³ held that,

3 AIR 1992 SC 604

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 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.*

17] The case of applicant nos.3 to 11 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].

18] 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.3 to 11. Hence, the application to the extent of applicant nos.3 to 11 is allowed. First Information Report bearing Crime No.171/2017, registered at Shivajinagar Police Station Latur, dated 16.06.2017, for the offences punishable under Sections 376, 377, 420, 406, 384, 204, 504, 506 r/w.34 of the Indian Penal Code and under Section 4 of POCSO Act, and Section 66 [E] of the Information Technology Act, stands quashed to the extent of applicant nos.3 to 11. Rule made absolute on above terms.

19] The application to the extent of applicant nos.1 and 2 stands rejected.

20] 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 nos.1 and 2 from availing of
an appropriate remedy as available in law.

[MANGESH S.PATIL]
JUDGE

[S.S.SHINDE]
JUDGE

DDC