

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

CRIMINAL APPLICATION NO. 3551 OF 2017

1. Tushar Sudamrao Selukar,
Age : 31 yrs., Occu. Service,

2. Maya Sudamrao Selukar,
Age : 56 years, Occu. Housewife,

Both Nos. 1 and 2 Residing at
Flat No. 603, Paras Basera, Poralwal Road,
Lohgaon, Pune.

3. Sneha Sachin Bavane,
Age : 29 years, Occu. Housewife,
Residing at Hanuman Nagar,
Plot No. 51, Medical Chowk,
Nagpur.

4. Shilpa Sanjay Mundalkar,
Age : 46 years, Occu. Service,

5. Sanjay Istari Mundalkar,
Age : 46 years, Occu. Service,

Both No. 4 and 5 Residing at
Plot No. 51, Hanuman Nagar,
Medical Chowk, Nagpur.

6. Sachin Gulabrao Bavne,
Age : 31 years, Occu. Service,
R/o. Residing at Airforce Station,
Leh-Laddakh.

... Applicants

VERSUS

1. The State of Maharashtra,
Through CIDCO Police Station,
District Aurangabad.

2. Rajeshri Tushar Selukar,
Age : 28 years, Occu. Service,
R/o. Flat No. D-1, Plot No. 5,
Shivalaya Society, G-Sector,
CIDCO Town, Aurangabad-431 001. ... Respondents

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Mr Pavan P. Uttarwar, Advocate for the applicants
Mrs P. V. Diggikar, APP for respondent/State
Ms Vanita S. Sangle, Advocate for respondent No. 2
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CORAM : S. S. SHINDE &
A. M. DHAVALA, JJ.

DATE : 18.09.2017.

ORAL JUDGMENT (PER S. S. SHINDE, J.) :

1. At the outset, learned counsel appearing for the applicants seeks permission to withdraw the application presented on behalf of applicants No. 1 & 2.

2. Leave granted.

3. The instant criminal application filed by applicants No. 1 & 2 stands dismissed as withdrawn.

4. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

5. This application is filed u/s 482 of the Code of Criminal Procedure with the following prayer.

B. The FIR No. 439/2017 registered with CIDCO Police Station, Aurangabad, on 24.06.2017 punishable under Section 498 (A), 506 & 34 of the I.P.C. and Section 3, 4 of Dowry Prohibition Act may kindly be quashed and set aside.

6. Respondent No. 2 herein has filed FIR bearing No.0439/2017 registered with CIDCO Police Station, Aurangabad (City) on 24.06.2017 for the offences punishable under Sections 498A, 506 r/w 34 of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act.

7. It is alleged in the First Information Report that, the marriage of respondent No. 2 – Rajeshri with applicant No. 1- Tushar has been solemnized on 28.03.2016. Since applicant no. 1 is serving in a private Company at Lohgaon (Pune), respondent No. 2 started

cohabiting with applicant No. 1 at Pune. Applicant No. 2 used to reside with the couple at the relevant time at Pune. It is further alleged that the applicants herein started ill-treating and harassing respondent No. 2 on account of non-fulfillment of demand of Rs.2.00 lakhs. It is further alleged in the FIR that, applicant No. 1 used to ill-treat respondent No. 2 and other co-accused used to instigate applicant No. 1. As a result of ill-treatment & harassment, respondent No. 2 left the matrimonial home at Pune on 16.04.2017 and came to Aurangabad to reside with her parents. It is further alleged that respondent No. 2 had approached the office of Police Commissioner, Aurangabad so as to explore the possibility of bringing the accused across the table for settlement. However, there was no settlement between the parties and therefore, the First Information Report has been lodged at CIDCO Police Station by respondent No. 2. Hence, this application has been filed by the applicants i.e. an accused for quashing the FIR.

8. Learned counsel for the applicants submits that, the allegations in the FIR are vague and omnibus. It is further submitted that, there was no cause of action for filing the FIR at Aurangabad. Cause of action to file said FIR arisen at Lohgaon, Pune. Learned counsel has invited our attention to the copies of the documents placed on record and submitted that, applicants No. 3 to 5 are residing at

Nagpur and applicant No. 6 is serving in Air Force and posted at Leh-Laddakh.

9. On the other hand, learned APP appearing for the State submits that, the alleged offences have been disclosed and, therefore, further investigation into the crime is necessary.

10. Learned counsel appearing for respondent No. 2 submits that, on careful perusal of the allegations in the FIR, alleged offences are disclosed and, therefore, prayer of the applicants for quashing of FIR may not be favourably considered. It is submitted that, since the parents of respondent No. 2 are residing at Aurangabad, she has lodged FIR in CIDCO Police Station at Aurangabad.

11. We have heard learned counsel appearing on behalf of the respective parties, and with their able assistance read the allegations in the FIR, reply filed by respondent No. 2 and perused the investigation papers.

12. On careful perusal of the allegations in the FIR, it clearly emerges that the ill-treatment and harassment alleged as against the applicants by respondent No. 2 is when she was residing with

applicants No. 1 and 2 at Pune. Nothing has been brought to the notice of this Court by the counsel appearing for respondent No. 2 that, part of cause of action or any specific incident has ever taken place at Aurangabad. So far as applicants No. 3 to 6 are concerned, there are vague and general allegations. No any specific overt act against each of the applicants has been mentioned in the FIR. It further appears that, applicants No. 3 to 5 reside at Nagpur, which is more than 700 kms away from Pune, as rightly submitted by the counsel appearing for the applicants. The applicant no. 6 is serving in Air Force and posted at Leh-Laddakh. Applicants No. 4 to 6 are distant relatives of applicant No. 1.

13. The Hon'ble Apex Court in case of "*State of Haryana V/s Bhajan Lal*" [AIR 1992 SC 604] in para 108 held thus:

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 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.*

14. In the light of the discussion made herein above and keeping in view the observations of the Supreme Court in the above referred case, we are inclined to allow the application of the applicants No. 3 to 6 and it is accordingly allowed.

15. First Information Report bearing C.R. No. 0439/2017 registered with CIDCO Police Station, Aurangabad (City) on 24.06.2017 for the offences punishable under Sections 498A, 506 r/w 34 of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act, stands quashed and set aside to the extent of applicants No. 3 to 6 herein.

16. So far as applicants No. 1 and 2 are concerned, in the light of the discussion in para no. 12 herein above and since the entire cause of action arose at Pune, FIR bearing No. 0439/2017 registered against applicants No. 1 and 2 with CIDCO Police Station, Aurangabad (City) on 24.06.2017 for the offences punishable under Sections 498A, 506 r/w 34 of the Indian Penal Code and Sections 3 & 4 of the Dowry

Prohibition Act deserves to be transferred, and same is accordingly transferred to Police Station, Lohgaon, Pune. Needless to observe that, after transfer of an investigation and handing over the papers to the Police Station at Lohgaon, Pune, said Police Station can cause further investigation.

17. Rule made absolute in the above terms with no order as to costs.

[A. M. DHAVAL]
JUDGE

[S. S. SHINDE]
JUDGE

sgp