

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1105 OF 2016

1. Rajendra Tukaram Chaudhari
Age : 39 years, Occ : Private service,
2. Shakuntala Tukaram Chaudhari
Age : 64 years, Occ : Bedridden
3. Tukaram Yadav Chaudhari
Age : 72 years, Occ : Nil,

Petitioner nos.1 to 3 R/o
Plot No.16, Near Swami Samarth Kendra,
Rameshwar Colony, Mehrun, Jalgaon,
Tq. & Dist. Jalgaon.

4. Bharti W/o Arun Tiwari
Age : 34 years, Occ : Hh,
R/o Mehrun Gaon,
Tq. & Dist. Jalgaon.

...PETITIONERS

-VERSUS-

1. The State of Maharashtra,
Through
Police Inspector,
Chopda City Police Station,
Tq. Chopda, Dist. Jalgaon.
2. Manisha Rajendra Chaudhari
Age : 34 years, Occ : Nil,
R/o C/o Dinkar Raghunath Jade
Bhaikotwal Road, Near Ubhya Maruti Mandir,
Chopda, Tq. Chopda, Dist. Jalgaon. ..RESPONDENTS

Advocate for the petitioners : Mr.Girish Nagori
A.P.P. for respondent no.1 : Mr.S.G. Karlekar
Advocate for respondent no.2 : Ms. Z.M. Surti

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

**RESERVED ON : 8th March, 2017
PRONOUNCED ON : 15th March, 2017**

JUDGMENT (PER S.S.SHINDE, J)

Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition is filed with the following prayer :-

"To quash and set aside the FIR at Exhibit "A" and further proceedings in CR 119/2016 with Chopda Police Station, Tq. Chopda Jalgaon under section 498-A, 323, 504, 506, 507 of Indian Penal Code dated 21.07.2016 and for that purpose issue necessary orders."

3. When this Petition was taken up for hearing on admission on 15th September, 2016, so far as petitioner no.1 - Rajendra Tukaram Chaudhari and petitioner no.4- Bharti W/o Arun Tiwari are concerned, their application was rejected and the notices were issued to the respondents, so as to examine the cases of petitioner nos.2 and 3.

4. The learned counsel appearing for the petitioners submits that, petitioner nos.2 and 3 are old aged persons. The age of petitioner no.2 is 65 years and the age of petitioner no.3 is 73 years. It is submitted that, both of them are suffering from serious ailments. He invites our attention to the medical certificates and submits that, those certificates would clearly show that, both petitioner nos.2 and 3 are bedridden and under treatment of the Medical Officer, General Hospital, Jalgaon. He further submits that, even if the entire allegations in the first information report are taken at its face value and read in its entirety, the alleged offences are not disclosed as against petitioner nos. 2 and 3, and therefore, the First Information Report deserves to be quashed and set aside.

5. On the other hand, the learned counsel appearing for respondent no.2 invites our attention to the averments in the affidavit in reply filed on behalf of respondent no.2 and also allegations in the first information report, and submits that, the

specific overt acts are attributed to petitioner nos.2 and 3 and the specific role is also assigned to them. There was demand of money and also mental as well as physical harassment to respondent no.2 by petitioner nos.2 and 3. It is submitted that, there was illtreatment and harassment at the hands of the petitioners and their role cannot be segregated/separated. It is submitted that, if the allegations in the first information report are carefully perused, the ingredients of the alleged offences have been disclosed. Therefore, the learned counsel appearing for respondent no.2 submits that the Petition may be rejected.

6. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioners and the learned counsel appearing for respondent no.2. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, annexures thereto, the copies of the medical certificates placed on record by petitioner nos.2 and 3 and also the reply filed by respondent no.2. Upon careful

perusal of the copies of the medical certificates produced on record, it clearly appears that petitioner nos.2 and 3 are senior citizens and they are under treatment of the Medical Officer, General Hospital, Jalgaon. It further appears that, they are advised to take complete bed rest.

7. Apart from the said certificates placed on record, if the allegations in the first information report are carefully perused, there is no specific overt act attributed qua petitioner nos.2 and 3 and also there is no specific instance or particular date is mentioned. There are general allegations against them. Therefore, taking overall view of the matter, in our considered view, the case of petitioner nos.2 and 3 for quashing the first information report deserves consideration.

8. 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

1 (2012) 10 SCC 741

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 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."

9. The Supreme Court in the case of "**State of Haryana V/s Bhajan Lal**³" 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 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 petitioner nos.2 and 3 is covered under category nos.1 and 5.

10. In the result, we pass the following order:-

ORDER

(i) The Petition is partly allowed. The F.I.R. bearing C.R. No.119/2016 registered with Chopda Police Station, Tq. Chopda, Dist. Jalgaon under Sections 498-A, 323, 504, 506, 507 of the Indian Penal Code is quashed and set aside qua petitioner no.2 - Shakuntala Tukaram Chaudhari and petitioner no. 3 - Tukaram Yadav Chaudhari.

(ii) The Petition is disposed of accordingly. Rule is made absolute in the above terms.

(iii) However, we make it clear that, the

further investigation can proceed as against
petitioner no.1 - Rajendra Tukaram Chaudhari and
petitioner no.4 - Bharti W/o Arun Tiwari.

(K.K. SONAWANE, J.)

(S.S. SHINDE, J.)

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