

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

CRIMINAL APPLICATION NO.4999 OF 2016

1. Radhakishan s/o.Shahaji Pote,
Age- 65 years, Occu-Agriculture,
R/o.Raigavhan, Tq.Partur,
Dist. Jalna.
2. Kusum w/o.Radhakisan Pote,
Age-60 years, Occu-Housewife,
R/o. As above.
3. Usha d/o.Radhakishan Pote,
Age-22 Years, occu-Student
R/o.As above.
4. Mangal w/o.Sakharam Daund,
Age-35 Years, Occu.Household,
R/o.Kaudgaon, Tq.Ambad,
Dist.Jalna.
5. Sakharam s/o.Dnyandev Daund,
Age-38 Years, Occu.Agriculture,
R/o.As above.

APPLICANTS

[Orig.Accused nos.2 to 5]

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Gondi Police Station,
Tq. Ambad, Dist. Jalna.
2. Jayashree w/o.Balasaheb Pote
Age-27 Years, Occu-Housewife,
R/o.Nalowadi, Tq. Ambad,
Dist. Jalna.

RESPONDENTS

[Resp.no.2 Ori. complainant]

...
Mr.Suvidh S.Kulkarni, Advocate for the
applicants
Mr.M.M.Nerlikar, APP for Respondent no.1/
State.
Mrs.S.K.Doke, Advocate holding for
Mr.K.R.Doke, Advocate for respondent no.2.

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

Reserved on : 20.02.2017
Pronounced on : 23.02.2017

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

1] Heard.

2] Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

3] This Application is filed taking
exception to the impugned FIR bearing Crime
No.276/2016 registered with Gondhi Police
Station, District Jalna, for the offences
punishable under Sections 498 (A), 323, 504
r/w.34 of the Indian Penal Code and Sections
3 and 4 of the Dowry Prohibition Act.

4] The learned counsel appearing for the applicants submit that the applicants are no way concerned with the alleged commission of crime. Applicant nos.3 and 4 are residing separately from the house of accused no.1 and to that effect they have placed on record copy of proof of their residence. It is submitted that applicant no.1 is of 65 years of age and suffering from heart ailment, which can be corroborated from the medical evidence. Applicant no.3 is the daughter of applicant nos.1 and 2 and sister of accused no.1 has recently completed her course of Engineering at Kolhapur and use to reside there during her education i.e. away from the house of complainant and accused no.1. It is submitted that the allegation in the FIR are absolutely vague in nature. Even if the allegations made against the present applicants are taken at its face value, nothing inculpatory was made out against the

present applicants and continuance of any criminal proceedings instituted on the basis of crime registered against them would be an abuse of process of law/court. There are no specific allegations against the applicants. The learned counsel invites our attention to the averments and grounds taken in the application and submits that the application deserves to be allowed.

5] On the other hand, the learned APP appearing for the respondent—State relying upon the investigation papers submits that there are specific allegations against the applicants, and therefore, those allegations can be tested only during trial.

6] The learned counsel appearing for respondent no.2 invites our attention to the statements of the allegations in the FIR and also the statements of the witnesses and submits that, there was ill-treatment and

harassment at the hands of the applicants and husband to the informant. They were asking her to bring Rs.1 lac from her parents. The learned counsel further submits that there was demand of Rs.2 lacs from the parents for purchasing the vehicle. In spite of serious efforts of respondent no.2 and her parents to resolve dispute, the applicants continued their ill-treatment. The learned counsel invites our attention to the affidavit-in-reply filed on behalf of respondent no.2 and in particular para 13 thereof and submits that father of respondent no.2 deposited amount of Rs.35,000/- in the account of the husband of respondent no.2. He invites our attention to the details of bank account given in para 13 of the affidavit-in-reply. Therefore, he submits that the application may be rejected.

7] We have given careful consideration to the rival submissions of the learned

counsel appearing for the respective parties. With their able assistance, we have perused the averments in the application, annexures thereto, affidavit-in-reply filed by respondent no.2 and the investigation papers made available for perusal of this Court. It appears from the allegations in the FIR and also title cause of the application that applicant nos.1 and 2 are residing in the matrimonial home. The allegation against them cannot be brushed aside and those need investigation. There are allegations of ill-treatment and harassment on account of not bringing Rs.1 lac by respondent no.2 from her parents. Therefore, at this stage, their application deserves no consideration.

8] So far as applicant no.3 is concerned, she is student and it appears that she was prosecuting her Engineering course at Kolhapur. So far as applicant nos. 4 and 5 are concerned, they are residing at Kaudgaon,

Taluka Ambad, District Jalna and residing separately at different place than the matrimonial home. Upon careful perusal of the allegations in the FIR, so far as applicant nos.3 to 5 are concerned, there are general allegations without mentioning any specific incident or date. Therefore, in view of the fact that applicant no.3 was prosecuting her studies at Kolhapur at the relevant time as a student of Engineering and applicant no.4 is married sister of accused no.1 and applicant no.5 is her husband, an allegation in the FIR appears to be absurd and inherently improbable. The Supreme Court in the case of "**State of Haryana V/s Bhajan Lal**"¹ in para 108 by way of an illustration laid down categories wherein the High Court can quash the FIR:

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV

1 AIR 1992 SC 604

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.

9] so far as applicant nos.3 to 5 are concerned, their case is covered by afore-mentioned category nos.1, 2 and 5.

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

11] Therefore, taking over all view of the matter, in our opinion, so far as applicant nos.1 and 2 are concerned, the ingredients of the alleged offences have been disclosed, and therefore, we are not inclined to entertain their application for quashing the First Information Report, hence, the application to the extent of applicant no.1 Radhakishan Shahaji Pote and applicant no.2 Kusum Radhiksan Pote stands rejected.

12] Application to the extent of applicant no.3 Usha Radhakishan Pote, applicant no.4 Managal Sakharam Daund and applicant no.5 Sakharam Dnyandev Daund stands allowed in terms of prayer clause-B. Rule made absolute to the above extent. The application is allowed partly and same stands disposed of accordingly.

13] The observations made herein above

are *prima facie* in nature for the purpose of adjudication of the present application only. We make it clear that, though we have rejected the application of applicant nos.1 and 2, the said rejection shall not be construed as an impediment to them, in case they wish to avail remedy of filing application for discharge before the concerned Court in the event of filing of charge-sheet by the Investigating Officer.

14] In view of disposal of Criminal Application No.4999/2016, the Criminal Application No.6724 of 2016 does not survive and hence same stands disposed of.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE