

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4650 OF 2017

Pandit s/o Baliram Chavan,
Age-23 years, Occu:Education,
R/o-Ashwini Medical College
Boys Hostel, Kumbhari,
Tq-Solapur(South),
Dist-Solapur.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Police Station,
Majalgaon (Rural), Dist-Beed,
- 2) Balu s/o Gulab Rathod,
Age-29 years, Occu:Agril.,
R/o-Barabhai Tanda Rajegaon,
Tq-Majalgaon, Dist-Beed.

...RESPONDENTS

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Mr.S.J. Salunke Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent No.1.
Mr.S.D. Kaldate Advocate h/f. Mr.P.N. Muley
Advocate for Respondent No.2.

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

DATE : 5TH OCTOBER, 2017

ORAL JUDGMENT [PER S.S. SHINDE, J.] :

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

2. This Application takes exception to the First Information Report No.221 of 2017 dated 7th July, 2017 registered with police station, Majalgaon (Rural), Dist-Beed for the offence punishable under Section 324, 504, 506, 34 of the Indian Penal Code.

3. Learned counsel for the Applicant invites our attention to the allegations in the First Information Report (in short "FIR") and submits that even if the allegations in the FIR are taken at its face value and read in its entirety, an alleged offences have not been disclosed against the Applicant. He submits that there are general allegations in the FIR. He invites our attention

to the copy of the "attendance certificate" (Exhibit B to the petition) and submits that the Applicant is a student studying in Ashwini Rural Medical College, Kumbhari, Dist-Solapur and on the relevant date he attended the College and to that effect attendance certificate has been issued by the Dean of the said Medical College.

4. On the other hand, learned A.P.P. appearing for the State and learned counsel appearing for Respondent No.2 jointly submits that the Applicant is named in the FIR and along with other accused he was also involved in the alleged offences and therefore at the stage of investigation, the prayer of the Applicant to quash the FIR may not be acceded to.

5. Upon hearing learned counsel appearing for the Applicant, learned A.P.P. appearing for the State and learned counsel appearing for Respondent No.2, and upon perusal of the

allegations in the FIR and the copy of attendance certificate placed on record at Exhibit-B, Page-14 of the compilation of the Application, we are of the considered opinion that the FIR deserves to be quashed qua the Applicant, for the reasons set out herein below.

6. Upon careful perusal of the allegations in the FIR, except naming the present Applicant in the FIR no any overt act has been attributed to him. Apart from it, we have perused the investigation papers, and it appears that nothing incriminating has been revealed against the Applicant during the course of the investigation. So far copy of the attendance certificate is concerned, there is no reason to doubt the said certificate which has been issued by the highest authority of the Medical College i.e. Dean of Ashwini Rural Medical College, Kumbhari, Dist-Solapur, mentioning therein that the Applicant attended the classes between the period from 5th

July, 2017 till 10th July, 2017.

7. The Supreme Court in the case of *State of Haryana V/s Bhajan Lal*¹, in Para 108 of the Judgment 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

¹ AIR 1992 SC 604

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.*

8. As already observed, the Applicant is only named in the FIR and there are no any allegations against the Applicant to attract the ingredients of alleged offences and consequently does not constitute any offences as against the Applicant. Therefore, in our considered opinion, keeping in view the categories laid down in the case of **Bhajanlal (supra)**, the case of the present Applicant would fall within category Nos.1 and 5 of the aforesaid categories.

9. In the light of discussion herein above, the Application deserves to be allowed. Accordingly the Application is allowed. The First Information Report bearing No.221 of 2017 dated 7th July, 2017 registered with Police Station, Majalgaon (Rural), Dist-Beed for the offence punishable under Sections 324, 5034, 506, 34 of the Indian Penal Code, stands quashed and set aside qua the Applicant.

10. Rule made absolute in above terms. The Application stands disposed of, accordingly.

11. We make it clear that the investigating officer can proceed against the other accused. The observations made herein above are prima facie in nature and confined to the adjudication of the present Application only.

[MANGESH S. PATIL, J.]

asb/OCT17

[S.S. SHINDE, J.]