

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

**BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.4651 OF 2017**

- 1) Shankar s/o Manikrao Kagde,  
Age-60 years, Occu:Pensioner,  
R/o-Chhatrapati Colony, D.P. Road,  
Beed, Tq. & Dist-Beed,
- 2) Radhabai w/o Shankarrao Kagde,  
Age-55 years, Occu:Housewife,  
R/o-Chhatrapati Colony, D.P. Road,  
Beed, Tq. & Dist-Beed,

**[Application of Applicant Nos.1 and 2  
is rejected as per Order passed by  
this Court on 4th September, 2017]**

- 3) Dr. Suvarna w/o Dnyaneshwar Patil,  
Age-35 years, Occu:Medical Practitioner,  
R/o-Akluj, Tq-malshiras,  
Dist-Solapur,
- 4) Dr. Dnyaneshwar s/o Sadashiv Patil,  
Age-41 years, Occu:Medical Practitioner,  
R/o-Akluj, Tq-Malshiras,  
Dist-Solapur.

**...APPLICANTS**

**VERSUS**

- 1) The State of Maharashtra,  
Through Police Station,  
Shivajinagar, Beed,  
Dist-Beed,

- 2) Vaishali Shivprasad Kagde,  
Age-28 years, Occu:Medical Practitioner,  
R/o-C/o-Rameshwar Dadarao Bawale,  
Sambhaji Nagar, Nagar Road,  
Beed, Tq. & Dist-Beed.

**...RESPONDENTS**

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Mr.S.J. Salunke Advocate for Applicant  
Nos.3 and 4.

Application of Applicant Nos.1 and 2 is  
rejected as per Order dated 04.09.2017

Mr.D.R. Kale, A.P.P. for Respondent No.1.

Mrs. V.A. Shinde Advocate for Respondent  
No.2.

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

**DATE : 23RD NOVEMBER, 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 is filed with following  
prayers:

B] The FIR No.557/2017 dated 11/08/2017

registered at Police Station Shivajinagar Beed, Dist-Beed for the offence punishable u/sec. 498-A, 323, 504, 506, 34 of I.P.C., may kindly be quashed, which is at **Exhibit "A"**.

B-1] The charge-sheet filed against the applicants in Crime No.557/2017 dated 11/08/2017 may kindly be quashed and set aside, which is at **Exhibit "E"**,

B-2] The Criminal Case bearing R.C.C. No.417/2017 (State vs. Shivprasad and others) pending on the file of learned J.M.F.C. Beed may kindly be quashed and set aside."

3. So far as Applicant No.1- Shankar s/o Manikrao Kagde and Applicant No.2 - Radhabai w/o Shankarrao Kagde are concerned, their Application is rejected by this Court on 4th September, 2017. Therefore, adjudication of this Application is confined to Applicant No.3 - Dr. Suvarna w/o Dnyaneshwar Patil and Applicant No.4 - Dr. Dnyaneshwar s/o Sadashiv Patil.

4. Learned counsel appearing for Applicant Nos.3 and 4 invites our attention to the allegations in the First Information Report (for short "F.I.R.") and submits that there are general allegations without mentioning any specific incident or overt act qua Applicant Nos.3 and 4. Applicant Nos.3 and 4 are medical practitioners. Applicant No.3 is sister-in-law of Respondent No.2 and Applicant No.4 is husband of Applicant No.3. Applicant Nos.3 and 4 are residing at Akluj in Solapur District, which is more than 200 K.M.s away from Beed. It is submitted that even if the allegations in the F.I.R. are taken at its face value and read in its entirety, an alleged offences are not disclosed. The allegations in the F.I.R. are inherently improbable in as much as the Applicant Nos.3 and 4 are residing at Akluj and the alleged instigations to the husband of Respondent No.2 could not be possible. It is submitted that since Applicant Nos.3 and 4 are

medical practitioners and earning handsome amount, there is no reason for them to demand any amount from Respondent No.2.

5. On the other hand, learned A.P.P. appearing for the State relying upon the allegations in the F.I.R. and accompaniments of the charge-sheet, submits that there is sufficient material collected by the Investigating Officer which would show the involvement of the Applicants and therefore the Application may be rejected.

6. Learned counsel appearing for Respondent No.2 invites our attention to the allegations in the F.I.R. and specific allegations against Applicant Nos.3 and 4, and submits that merely because Applicant Nos. 3 and 4 are residing at Akluj, District Solapur is no ground to quash the F.I.R. There are specific allegations against those Applicants. There are also allegations of instigation and therefore if such allegations are

there, merely because Applicant Nos.3 and 4 are residing at Akluj, cannot be considered as ground to quash the F.I.R. Learned counsel invites our attention to the statements of other witnesses including the statement of Santosh Jadhav and submits that contents of the said statement would clearly demonstrate the involvement of the Applicants in the alleged offences.

7. We have given careful consideration to the submissions of the learned counsel appearing for the respective parties. With their able assistance, we have perused the grounds taken in the Application, annexures thereto, allegations in the F.I.R., charge-sheet and its accompaniments. Upon careful perusal of the allegations in the F.I.R., at the highest allegations against Applicant Nos.3 and 4 can be said to be instigation for the alleged commission of offence by the husband and other members of the matrimonial house. There are casual references to

their names and the allegations are general in nature. Upon careful perusal of the allegations in the F.I.R. and also the statement of witnesses, in our opinion, the alleged offences are not disclosed as against Applicant Nos. 3 and 4. As rightly submitted by the learned counsel appearing for the Applicants that it is highly improbable that Applicant Nos. 3 and 4 who are Medical Practitioners, residing at Akluj in Solapur District, which is more than 200 K.M.s away from Beed, would indulge in such alleged offences. Therefore, in our opinion, on both counts i.e. the allegations are general in nature and casual references are given, and secondly the allegations in the F.I.R. are inherently improbable against Applicant Nos.3 and 4, we are inclined to allow this Application qua Applicant Nos.3 and 4.

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

and another<sup>1</sup> 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*<sup>2</sup> 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*

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1 (2012) 10 SCC 741

2 (2000) 3 SCC 693

*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<sup>3</sup>" 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 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.*

10. Upon careful perusal of the allegations in the First Information Report, we find that those are general in nature without mentioning any specific overt-act qua Applicant Nos.3 and 4 and without any specific incident. Therefore, in our considered opinion, keeping in view the categories laid down in the case of Bhajanlal (supra), the case of the Applicant Nos.3 and 4 would fall within category Nos.1, 2, 3 and 5 of the aforesaid categories. In that view of the matter, an inevitable conclusion is that the First Information Report and the consequential charge-sheet, so far as Applicant Nos.3 and 4 are concerned, deserve to be quashed and set aside.

11. In the result, the First Information Report and the consequential charge-sheet and further proceedings in pursuance of the same, to

the extent of Applicant No.3 - Dr. Suvarna w/o Dnyaneshwar Patil and Applicant No.4 - Dr. Dnyaneshwar s/o Sadashiv Patil to 4, are quashed and set aside. Rule is made absolute in terms of prayer clause "B], B-1 and B-2] to the Application. The Application is allowed and the same stands disposed of, accordingly.

12. It is made clear that the observations made herein above are only in respect of Applicant Nos.3 and 4, and the trial Court shall not get influenced by the said observations while conducting the trial in respect of Applicant No.1 - Shankar s/o Manikrao Kagde and Applicant No.2 - Radhabai w/o Shankarrao Kagde.

**[MANGESH S. PATIL, J.]**

**[S.S. SHINDE, J.]**

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