

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

CRIMINAL APPLICATION NO.4741 OF 2017

1. Athar Khan s/o. Waheed Khan
Age: 38 Years, Occupation Labour,
R/o. Railway Station Road, Jalna.
2. Waheed Khan s/o.Mastan Pathan
Age: 73 Years, Occupation Nil
3. Meharunnisa @ Mehrunbi w/o. Waheed Khan
Age: 68 Years, Occupation: Household

Respondent no.2 & 3
R/o. Shantinath Nagar,
Aurangabad Road, Jalna,
Taluka and District Jalna

4. Azhar Khan s/o. Waheed Khan
Age: 24 Years, Occupation: Student
R/o. Aurangabad.
5. Maksood Ahmed s/o. Moinuddin
Age: 39 Years, Occupation Service
R/o. Near G.P.T. Transport,
Kadrabad Plots, Parbhani
District Parbhani
6. Ishrat w/o.Maksood Ahmed
Age: 30 Years, Occupation Household
R/o.Kadrabad Plots, Parbhani
Taluka and District Parbhani
7. Farhat w/o. Sheikh Mohsin
Age: 28 years, Occupation : Household
R/o. Baji Umrada Tanda, Tq. Jalna
Dist : Jalna.

8. Asiya @ Shanno w/o. Sameer Pathan
Age: 26 Years, Occupation : Household
R/o. Survey No.18, Flat No.7,
Rathi Complex, Sukhsagar Nagar,
Opposite Ambika Sweet,
Katraj, Pune.

APPLICANTS

VERSUS

1. The State of Maharashtra
Through Superintendent of Police
Parbhani, District Parbhani
and through its Mondha Police Station,
Parbhani, District Parbhani.
2. Sultanabi w/o. Athar Khan,
Age: 31 years, Occupation: Household,
R/o. At post Karegaon, Mondha
Taluka and District Parbhani.

RESPONDENTS

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Mr.Swapnil S.Patunkar, Advocate for the
applicants.

Mr.V.M.Kagne, APP for the Respondent/State

Mr.E.P.Sawant, Advocate holding for
Mr.M.P.Kale, Advocate for respondent no.2.

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

Date: 29.11.2017

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

1. Heard. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

2. This Application is filed praying therein to quash and set aside the First Information Report vide Crime No.73/2017 registered at New Mondha Police Station, Parbhani, for the offences punishable under Sections 323, 494, 498-A, 504, 506 r/w.34 of the Indian Penal Code.

3. The application to the extent of application nos.1 to 3 has already been rejected as not pressed, by order dated 05.10.2017. Therefore, we are deciding the application to the extent of applicant nos. 4 to 8 only.

4. Learned counsel appearing for the applicants submits that, even if the allegations in the First Information Report [for short 'FIR'] are taken at their face value and read in their entirety, the alleged offences are not disclosed. Even if the allegations in the FIR are read as it is, no

role is attributed as against the applicant nos.4 to 8, on the contrary, there are general and vague allegations made against the applicant nos.4 to 8. He further submits that, there is inordinate delay in lodging the FIR, which has not been explained by the informant at all. He further submits that, applicant no.4 is residing at Aurangabad; applicant nos.5 and 6 are residing at Parbhani, applicant 7 is residing at Jalna separately and applicant no.8 is residing at Pune. He further submits that, the allegations are made against the applicants in respect of the incident of the Year 2013 and and FIR is lodged in the year 2017. The allegations are vague and general in nature. Therefore, he submits that, the application may be allowed.

5. He further submits that, respondent no.2 has lodged the FIR bearing No.279/2013 against the applicants on the same set of

allegations. Therefore, as per the settlement between the parties, this Court on 29.09.2014 in Criminal Application No.6759/2013 [Athar Khan s/o. Waheed Khan & others Vs.The State of Maharashtra & another] has quashed the said FIR. He further submits that, respondent no.2 has lodged another FIR bearing Crime No.59/2015 against the applicants on the same set of allegations. Therefore, this Court on 26.11.2015 in Criminal Application No.3361/2015 [Athar Khan s/o.Waheed Khan & others Vs.The State of Maharashtra & another] has also quashed the said FIR. Therefore, he submits that, the present FIR bearing Crime No.73/2017 has been lodged on the same set of facts and deserves to be quashed and set aside.

6. On the other hand, learned APP appearing for the respondent-State, relying upon the contents of the FIR and the investigation papers, submits that, there are

specific allegations against the applicants in the FIR. Therefore, he submits that, the further investigation in the FIR is necessary as the alleged offences have been disclosed.

7. Learned counsel appearing for respondent no.2 submits that, upon perusal of the allegations in the FIR, there are allegations against the applicants. They have ill-treated and harassed respondent no.2. There are allegations of demand of money. Therefore, he submits that, the application may be rejected.

8. We have given careful consideration to the submissions of the learned counsel appearing for the applicants, learned APP appearing for the respondent-State and learned counsel appearing for respondent no.2. With their able assistance, we have perused the contents of the FIR, the averments in the Application and annexures

thereto. There are general and vague allegations as against applicant nos.4 to 8. There are casual references as against applicant nos.4 to 8. It appears that, two FIRs have been lodged by respondent no.2 on the same set of facts against the applicants. Earlier two FIRs have been quashed by this Court. About incident in question compromise had taken place. Since 2014, the informant is residing with her parents in their house. The specific incident quoted in the FIR as against applicant nos.4 to 8 is dated 8th February, 2013. However, it is relevant to mention that, after the said incident, there was amicable settlement between the parties and as a result of such settlement, respondent no.2 returned to matrimonial home for cohabitation. Therefore, on the same set of allegations, which were already there in the earlier FIRs and prior to settlement between respondent no.2 and the accused,

there cannot be second investigation. These allegations relate back to four years prior to registration of the FIR. After resuming the cohabitation, again respondent no.2 left matrimonial home in the year 2014 and present FIR has been lodged on 21st February, 2017. There is inordinate delay in lodging the present FIR.

9. 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 active involvement would not justify taking cognizance against them and subjecting them to trial. In the said judgment, there is also reference to 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:

1 (2012) 10 SCC 741

2 (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."

10. 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 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.

3 AIR 1992 SC 604

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.*

11. Keeping in view the above-mentioned reported judgments in the cases of **Geeta Mehrotra and another [supra]** and **State of Haryana V/s Bhajan Lal [supra]** and in the peculiar facts and circumstances of this case, we are inclined to allow this application to the extent of applicant nos.4 to 8. The application to the extent of applicant nos.4 to 8 is allowed. The First Information Report vide Crime No.73/2017

registered at New Mondha Police Station, Parbhani, for the offence punishable under Sections 323, 494, 498-A, 504, 506 r/w.34 of the IPC stands quashed to the extent of applicant nos.4 to 8.

12. Rule is made absolute on above terms. The Application stands disposed of accordingly.

13. We make it clear that, the Investigating Officer can proceed against applicant nos.1 to 3 and to take necessary steps depending upon the outcome of the investigation whether to file charge-sheet or otherwise.

[MANGESH S.PATIL]
JUDGE

[S.S.SHINDE]
JUDGE