

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

CRIMINAL WRIT PETITION NO. 1215 OF 2016

1. Santosh S/o Nagnath Padile,
Age : 37 yrs, Occu. Teacher,
R/o Thodga Road,
Near Poshchamma Temple,
Ahmedpur, Tq. Ahmedpur,
Dist. Latur.
2. Nagnath S/o Sambhaji Padile,
Age : 72 yrs, Occu. Pensioner (Teacher)
R/o As above
3. Sulochana W/o Nagnath Padile
Age : 62 yrs, Occu. Household,
R/o As above.
4. Sachin S/o Nagnath Padile,
Age : 31 yrs, Occu. Agriculture,
R/o As above.
5. Hema W/o Sachin Padile,
Age : 24 yrs, Occu. Agriculture,
R/o As above.
6. Suchita W/o Prashant Gurude,
Age : 35 yrs, Occu. Household,
R/o Reddy colony, Udgir,
Tq. Udgir, District Latur
7. Prashant S/o Narsing Gurude,
Age : 40 yrs, Occu. Business,
R/o As above.
8. Ramkisan S/o Narsing Nadarge,
Age : 60 yrs, Occu. Business,
R/o S.T. Colony, Nalegaon Road,
Tq. Udgir, District Latur.
9. Ramdas S/o Nivrutti Kukale,
Age : 52 yrs, Occu. Teacher,
R/o Ahmedpur, Nathnagarm
College Road, C/o Building of Palmate Sir,
Tq. Ahmedpurm Dist. Latur.

10. Meena W/o Ramdas Kukale,
Age : 42, Occu. Household,
R/o As above.

...PETITIONERS

Versus

1. The State of Maharashtra
through Investigation Officer
in Crime No. 08/2015 registered with
Yusuf-wadgaon Police Station,
Tq. Kaij, Dist. Beed.
2. Sunita @ Anjali W/o Santosh Padile
C/o Sandipan Nagnath Istalkar
Age : 26 yrs, Occu. Household,
R/o Anjanpur, Tq. Ambajogai,
District. Beed.

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Mr. D. A. Mane, Advocate for petitioners
Mr. S.Y. Mahajan, APP for Respondent – State
Mr. S.B. Bapkar, Advocate for Respondent No. 2

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

DATED : 7th FEBRUARY, 2017.

JUDGMENT :- [Per : S.S. Shinde, J.)

1. Rule. Rule made returnable forthwith. Heard finally, With consent of learned counsel appearing for the parties.

2. The learned counsel appearing for the petitioners submits that the entire cause of action as per the allegations in the complaint has arose at Ambajogai, however, First Information Report (for short "FIR") was registered at Yusufwadgaon Police Station, Ta. Kaij. It is submitted that, even village Anjanpur where the parents of respondent No. 2 resides is also within the jurisdiction of Ambajogai

Tahsil, therefore, the Judicial Magistrate First Class, Kaij had no jurisdiction to entertain the complaint and issue directions to the Yusufwadgaon Police Station to cause investigation. The learned counsel appearing for the petitioners submits that even if the allegations in the FIR are taken at its face value and read in its entirety, an ingredients of alleged offences have not been attracted and no offences are disclosed as alleged against the petitioners. He further submits that there are general allegations and no specific overt acts have been attributed qua each of the petitioners. He further submits that petitioners No. 6 to 8 are resident of Udgir whereas petitioner No. 10 is resident of Ahmedpur. They are only named in the FIR without attributing any specific allegations, therefore he submits that petition deserves to be allowed.

3. On the other hand, learned APP appearing for the State submits that the village Anjanpur is included in the jurisdiction of Yusufwadgaon Police Station, Ta. Kaij, District Beed. He further submits that Yusufwadgaon Police Station is in Kaij Taluqa within the jurisdiction of Judicial Magistrate First Class, Kaij, therefore, the complaint filed by respondent No. 2 – complainant was entertained by the Judicial Magistrate First Class, at Kaij. The order passed by the learned Judicial Magistrate First Class, at Kaij does not suffer from any jurisdictional error. He further submits that without availing remedy of filing the revision before the Court of competent jurisdiction so as to challenge the order passed by the Judicial

Magistrate First Class, at Kaij, the petitioners have chosen to file the writ petition directly before the High court. He further submits that if an allegations in the FIR read in its entirety, an alleged offences have been disclosed. Therefore, the Investigating Officer has filed the charge-sheet. Therefore, he prays that writ petition deserves to be rejected.

4. The learned counsel appearing for respondent No. 2 placing reliance on the averments in the affidavit in-reply submits that, the village Anjanpur is included within the jurisdiction of Police Station Yusufwadgaon. Therefore, respondent No. 2 was required to lodge the complaint at Yusufwadgaon Police Station. He submits that there is no challenge by way of filing revision to the order passed by the Judicial Magistrate First Class, Kaij, thereby directing the Police authority of Yusufwadgaon Police Station to investigate into the complaint. He invites our attention to the prayers in the petition and submits that there is no prayer for quashing the FIR and prayer is made seeking quashment of the complaint, which is not in existence. Without prejudice to the arguments already advanced, he further submits that if the allegations in the complaint – FIR are read in its entirety, offences as alleged in the complaint are disclosed against the petitioners. Therefore, after investigation, the Investigating Officer thought it fit to file the charge-sheet. He further submits that, there are serious allegations in the FIR, and the Investigating Officer has collected sufficient material and on the

basis of said material the trial can be proceeded. Therefore, he submits that, the writ petition deserves to be rejected.

5. We have given careful consideration to the submissions advanced by the learned counsel appearing for the parties, with their able assistance perused the pleadings in the petition, grounds taken therein and annexures thereto, affidavit in-reply filed by respondent No. 2 and contents of the complaint-FIR. So far as jurisdiction of the Judicial Magistrate First Class, at Kaij is concerned, in passing the order and directing the investigation under section 156(3) of the Criminal Procedure Code is concerned, the village Aanjanpur comes within the jurisdiction of Yusufwadgaon Police Station and, therefore, we do not see any force in the submission of learned counsel appearing for the petitioners that, the Judicial Magistrate First Class, at Kaij had no jurisdiction to entertain the complaint. The contention of the learned counsel appearing for the respondents that the petition cannot succeed in absence of challenge to the order passed by the learned Judicial Magistrate First Class, at Kaij, in complaint bearing Regular Criminal Case No. 312 of 2014 before the revisional court, has no any force. Merely, because remedy of revision is available to the petitioners is not a ground to dislodge the petitioners when there is prayer for quashing the FIR. In that view of the matter, we do not see any force in the contention of learned counsel appearing for respondent No. 2 that petition cannot be entertained by bypassing the remedy of filing the

revision.

6. We have carefully perused the allegations in the FIR and also other documents placed on record and we are of the opinion that so far as petitioners NO. 6 to 8 and 10 are concerned, even if allegations in the FIR are taken at its face value and read in its entirety, the alleged offences have not been attracted - disclosed. There are no specific allegations quoting specific incidences or dates against the petitioners No. 6 to 8 and 10.

7. The Supreme Court in the case of "**State of Haryana V/s Bhajanlal¹**" held that, in following categories the Court would be able to quash the F.I.R. :

1. Whether the allegations made in the F.I.R. 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 Magistrate within the purview of Section 155(2) of the Code;
3. Where the uncontroverted allegations made in the F.I.R. 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 applicant;
4. Where the allegations in the F.I.R. do not constitute a 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;

1 AIR 1992 SC 604

5. Where the allegations made in the F.I.R. 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 provisions in the Code of the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with malafide 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. Keeping in view the aforementioned category Nos. 1 and 2, laid down in the case of ***State of Harayana Vs. Bhajanlal (supra)***, in our opinion so far as petitioners No. 6 to 8 and 10 are concerned, upon reading an allegations in the FIR in its entirety, an alleged offences have not been disclosed against them. Therefore, the proceeding based upon crime No. 8 of 2015 registered with the Police Station, Yusufwadgaon Tq. Kaij, District Beed deserves to be quashed to the extent of petitioners No. 6 to 8 and 10. In the result, following order.

9. The FIR i.e. crime No. 08 of 2015, registered with the Police Station Yusufwadgaon Tq. Kaij, District Beed for the offence punishable under sections 498-A, 323, 504 and 506 read with section 34 of the Indian Penal Code, and subsequent proceedings

based upon said crime to the extent of petitioners No. 6 to 8 and 10, namely, (6) Suchita Prashant Gurude, (7) Prashant Narsing Gurude, (8) Ramkisan Narsing Nadarge and (10) Meena Ramdas Kukale stands quashed and set aside. Rule is made absolute to above extent.

10. So far as petitioners No. (1) Santosh Nagnath Padile (2) Nagnath Sambhaji Padile, (3) Sulochana Nagnath Padile, (4) Sachin Nagnath Padile (5) Hema Sachin Padile and (9) Ramdas Nivurtti Kukale are concerned, the present petition stands rejected.

11. The petition is partly allowed in the above terms and the same stands disposed of.

Sd/-

[K. K. SONAWANE, J.

Sd/-

[S.S. SHINDE, J.]

MTK