

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

CRIMINAL APPLICATION 4943 OF 2017

- 1] John s/o Peter Makasare
Age 59 years, Occu:Service
- 2] Savita w/o. John Makasare
Age : 50 years, Occu: Housewife
- 3] Namrata w/o Ashish Burla
Age 28 years, occu : Service
R/o Dattanagar, Parbhani
A/p. All Applicants Residing at
Sarfaraz Nagar, Parbhani
Tq. & Dist.Parbhani ... APPLICANTS

Versus

- 1] The State of Maharashtra,
Through Nanalpeth Police Station
Parbhani, Tq. & Dist.Parbhani
- 2] Alka W/o. Arunkumar Burla
Age 58 years, Occu : Service
R/o. Kabra Nagar, Nanded
Tq. & Dist.Nanded. ..Respondents

Mr.M.V.Ghadge, Advocate for applicants.
Mr. D.R. Kale, APP for Respondent No. 1.
Mr.A.R.Borulkar h/f M.L.Wankhede,
Advocate for respondent No.2.

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

**RESERVED ON : 27/11/ 2017.
PRONOUNCED ON :05/12/2017.**

JUDGMENT (PER MANGESH S. PATIL,J.) :

1] Rule. Rule is made returnable forthwith. Heard finally with the consent of parties.

2] This is an application under Section 482 of Cr.P.C. The applicants are seeking to quash FIR No.144/17 registered with Nanalpeth Police Station, Parbhani for the offences punishable under Sections 306, 323, 506 read with 34 of IPC.

3] Shortly stated, the allegations in the FIR are to the effect that the deceased was the son of the respondent no.2-informant. He was married to the applicant no.3. The applicants no.1 and 2 are his parents-in-law. It is alleged that the applicants are residents of Parbhani. The applicant no.3 is serving in a Government Hospital at Parbhani as a Nurse. The deceased Ashish was in a private employment in Aurangabad. Under the pretext that he had to commute between Parbhani and Aurangabad, the applicants made him to resign from the job and since then he was residing with the applicants at Parbhani. However, all the applicants subjected him to mental and physical harassment. They also threatened respondent no.2 not to intervene or else they would falsely implicate her for harassment/cruelty. It is then alleged that fed up with the mental and physical harassment meted out to him, Ashish committed suicide by

hanging himself in the house of the applicants.

4] We have heard learned advocates for both sides and the learned APP. We have also perused papers of investigation.

5] According to the learned advocate for the applicants, even accepting the contents of the FIR at their face value, the ingredients for offences with which the applicants are charged, cannot be made out. In fact the applicants 1 and 2 were residing separately and the deceased was residing separately alongwith his wife the applicant no.3. The couple also have got twins out of the marriage. Since after leaving the job at Aurangabad, the deceased Ashish was not doing anything and was addicted to liquor. There used to be usual quarrels since he was not supporting the family. There was also a discord between him and his brother on account of two plots at Aurangabad and Nanded. He went into depression because of such discord. Except the matrimonial disagreements, there was no harassment. No specific allegations can be found against any of the applicants in the FIR. The contents are inherently improbable. The complaint has been lodged out of vengeance. Thus applying the principles in the case of Bhajanlal, the FIR deserves to be quashed.

6] The learned advocate for the applicants also pointed out that the brother of the applicant no.3 and the maternal uncle of the applicant no.3 were also roped in the same crime, however, this Court by judgment and order dated 1/9/2017 to which one of us (S.S.Shinde,J.) was a party in Criminal Applications No.3129/17 and 3130/17 has quashed the FIR to their extent. The learned advocate persuaded us to take a similar view even in respect of the present applicants.

7] The learned advocate for the respondent no.2 referring to her affidavit in reply (page 32) and the documents annexed thereto, submitted that the police papers apparently reveal that the deceased Ashish was subjected to physical and mental harassment and in all probabilities, that must have the reason for him to take the drastic step. He also referred to the *post mortem* report which reads that apart from the ligature marks around the neck, there were other external injuries in the form of two imprint abrasions of circular shape present over the back and the inquest panchanama also corroborates by describing these marks as marks of bite.

8] The learned APP submitted that the investigation carried out *prima facie* establishes a link between the suicide and the alleged harassment and the evidence collected is sufficient to submit the charge sheet.

9] It is necessary to note that the principles for quashing FIR have been crystallized by various pronouncements of the Supreme Court and the High Court. In the case of **State of Haryana V/s Bhajanlal; AIR 1992 S.C. 604**, some instances have been pointed out wherein the inherent powers under Section 482 of Cr.P.C. can be exercised suitably to quash the FIRs. These read as under :

“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 extra-ordinary 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 of 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] Bearing in mind these principles and after carefully going through the papers of the investigation, it is apparent that though the contents of the FIR are not very elaborate, the material collected by the investigating officer clearly corroborates the allegations levelled in the FIR. We indeed do not intend to express any final opinion as we should not. However, presence of bite marks on the back of the deceased Ashish may give a hint of he having been subjected to some kind of physical torture. In spite of he having committed suicide at the residence of the applicants, it is not that any of them or their relations have informed the respondent no.2 about the sad demise of her son. No plausible explanation is available for such conduct of the applicants. Instead, one Sharlet Taru, a neighbour has informed the respondent no.2 about the incident. The statements of witnesses with whom the investigating officer has made inquiry reveals that there was a persistent harassment meted out to the deceased by the applicants. It is necessary to bear in mind that the law does not expect the FIR to be an encyclopedia and one needs to look into the investigation carried out to ascertain whether the material collected during it corroborates the allegations in the FIR.

11] Considering all these facts and applying the principles laid down in the case of Bhajanlal, we do not see that the allegations are inherently improbable or do not constitute the ingredients of the offences viz. 306, 323 of IPC. Merely because some of the applicants' relations have been set free, by quashing FIR to their extent, we are of the view that, that would not compel us to take a similar view. The case of the applicants stand on a different footing and is based on the material collected by the investigating officer. Under these circumstances, we are satisfied that this is not a fit case

to quash and set aside the FIR by invoking the powers under Section 482 of Cr.P.C.

12] The Application is rejected. Rule is discharged.

(MANGESH S. PATIL,J.)

(S.S.SHINDE ,J.)

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