

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

CRIMINAL APPLICATION NO.5584 OF 2016

1. Moizoddin s/o. Azizuddin Qauzi
Age: 36 years, Occu. Electrician,
R/o. Near Gir School, Pathan Mohalla,
Pathri, Tq. Pathri, Dist. Parbhani.
2. Tahesin Begum widow/o Azizuddin Qauzi
Age: 66 Years, Occu. Household
R/o. as above.
3. Azimuddin s/o. Azizuddin Qauzi,
Age: 33 Years, Occu. Private Service
R/o. 9-2-418 Langar House
Golconda, Hyderabad, Andhra Pradesh
4. Rameezoddin s/o. Azizuddin Qauzi
Age: 30 years, Occu. Electrician
R/o. Near Gir School, Pathan Mohalla,
Pathri, Tq. Pathri, Dist. Parbhani
5. Shaziya Begum w/o. Muquibuddin Qauzi,
Age: 31 Years, Occu. Household,
R/o. Wangi Road, Magdumpura,
Tq. & Dist. Parbhani.
6. Muquibuddin s/o. Muneebuddin Qauzi
Age: 32 Years, Occu. Rickshaw Driver
R/o. as above.
7. Aliya Fatema w/o. Ahmed Nurul
Ambiya Qauzi
Age: 28 Yrs, Occu. Household
R/o. 9-7-731/13, Shaheen Manzil,
Shahid Tipu Sultan Road,
Near Jamali Masjid, Maltekdi,
Station Road, Itwara
Tq. and Dist. Nanded.

8. Mohammad Nazeeroddin Raziur
Raheman Farooqui
Age: 50 Years, Occu. Electrician
R/o. Ekta Nagar, Pathri, Tq. Pathri
Dist. Parbhani.
 9. Farhat Sultana Mohammad
Nazeeroddin Farooqui
Age: 36 Years, Occu. Household,
R/o. as above.
 10. Alimunisa Begum w/o. Abdul
Mannan Farooqui,
Age: 35 Years, Occu. Household,
Aziz Mohalla, Pathri,
Tq. Pathri, Dist. Parbhani.
 11. Abdul Mannan Rajiur Raheman Farooqui
Age: 45 Years, Occu. Electrician
R/o. as above.
 12. Fayazuddin Raziur Raheman Farooqui
Age: 38 Years, Occu. Electrician
R/o. as above.
- APPLICANTS**

VERSUS

1. The State of Maharashtra
Through Police Inspector
Police Station, Majalgaon City,
Tq. Majalgaon, Dist. Beed.
 2. Gohar Afreen w/o. Moizuddin Quazi
Age: 28 Yrs., Ocu. Household,
R/o. Pathan Mohalla, Pathri,
Tq. Pathri, Dist. Parbhani
At present R/o. Meethpada
Naddinnaka, Bhivandi
Dist. Thane.
- RESPONDENTS**

...

Mr.K.N. Farooqui, Advocate for the applicants
Mr.M.M.Nerlikar, APP for the Respondent/
State

Mr.T.A.Quadri, Advocate holding for
Mr.M.G.Mustafa, Advocate for respondent no.2

...

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

Reserved on : 06.03.2017
Pronounced on : 15.03.2017

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

1. It is the case of the applicants that respondent no.2 has filed First Information Report against the husband, mother-in-law and brothers of the husband and the relatives of the husband, thereby making false and omnibus allegations, without attributing any specific overt act or date of the incident. It is submitted that the police authority, without verifying the genuineness of the averments in the complaint filed by respondent no.2, has registered the FIR.

2. It is further submitted that

applicant nos.1, 3 and 4 are real brothers and they are residing separately. Applicant no.3 is residing in Hyderabad [Andhra Pradesh] since the year 2010. There is no joint family as such. Applicant no.1 and his mother i.e. applicant no.2, and his brother i.e. applicant no.4 are residing at Pathri, District Parbhani. Sister of applicant no.1, namely, Shaziya and brother-in-law Muquibuddin are residing at Wangi Road, Magdumpura, Parbhani. Aliya Fatema sister of applicant no.1 is residing at Nanded. Applicant nos. 8 and 9 maternal uncle and his wife are residing at Ekta Nagar, Pathri, District Parbhani. Applicant nos.10 to 12 are residing at Aziz Mohalla, Pathri, who are maternal uncle and aunt of applicant no.1. The maternal uncle of applicant Abdul Mannan is suffering from paralysis and he is bedridden. They have no concern with the allegation in the complaint and family of

respondent no.2. The learned counsel appearing for the applicants invites our attention to the copies of the Aadhar Cards and Medical Certificates of the applicants.

It is further submitted that informant i.e. respondent no.2 married, with applicant no.1 on 22nd October, 2008, and couple started residing separately at Pathri, District Parbhani. Out of the said marriage, informant begotten three daughters. Respondent no.2 left the house of applicant no.1 on 20th August, 2013, without giving any reason. Applicant no.1 has sent notice on 27.11.2013 to the informant, requesting for cohabitation. However, respondent no.2 did not turn up. Therefore, again notice was sent on 9th January, 2014, but there was no response from respondent no.2. Respondent no.2 is residing with her parents in Thane District, since 20th August, 2013. Applicant no.1 submitted application to the Women Cell

at Pathri Police Station. The said office has sent notice to respondent no.2 for settlement, however, she did not appear before the Women Redressal Forum.

3. It is submitted that applicant no.11 is suffering from paralysis and he is advised to bed rest. Applicant nos.4 to 10 and 12 are residing separately, they have no concerned with the family of applicant nos.1 to 4. However, only with a view to harass the applicants, the FIR is lodged with *ulterior motive* by the informant. The learned counsel further submits that even if the allegations in the FIR are read in its entirety, and taken at its face value, the alleged offences are not disclosed against the applicants. In support of his contention that, when there are omnibus allegations without attributing specific overt acts to the accused and if the allegations are inherently improbable and no prudent person can believe such allegation,

the learned counsel appearing for the applicants placed reliance on the ratio laid down in the following cases ***Preeti Gupta and another Vs. State of Jharkhand and another***¹, ***Chandralekha and others Vs. State of Rajasthan and another***², ***Ramesh and others Vs. State of T.N.***³, ***Rukmini Narvekar Vs. Vijaya Satardekar & Ors.***⁴, ***Saleha and Ors. Vs. State of Maharashtra and Ors.***⁵, ***Mayur Mozes Khajekar Vs. The State of Maharashtra***⁶ and ***Rahul s/o. Punjaram Nikam Vs. The State of Maharashtra***⁷ and the judgment of Gujrat High Court in the case of ***Devendra @ Tinku & others Vs. State of U.P. and another*** in Application No.3615/2012, decided on 8th April, 2013. Therefore, the learned counsel appearing for the applicants submits that, the application deserves to be allowed.

1 [2010] 7 SCC 667

2 [2013] 14 SCC 374

3 [2005] 3 SCC 507

4 [2008] 14 SCC 1

5 2015 All MR [Cri.] 2531

6 2015 All MR [Cri.] 3176

7 2015 All MR [Cri.] 2710

4. On the other hand, the learned APP appearing for the respondent-State, relying upon the investigation papers submits that, the Investigating Officer has recorded the statements of the witnesses, and *prima facie*, it is revealed that the applicants are involved in the alleged commission of offence, and therefore, the application may be rejected.

5. The learned counsel appearing for respondent no.2, relying upon the averments in the affidavit-in-reply submits that, it is true that applicant nos.1, 2 and 4 are real brothers, but it is specifically denied that they are residing separately. It is further denied that applicant no.3 is residing at Hyderabad since the year 2010. It is submitted that applicant nos. 1, 2 and 4 are the members of the joint family and reside at Pathri, District Parbhani. It is submitted

that, till that time respondent no.2 was driven out from the matrimonial home in the year 2013, all the accused/applicants were residing jointly. The marriage of the Aliya took place prior to 2 ½ years, after respondent no.2 is driven out from the matrimonial home. The learned counsel appearing for respondent no.2 invites our attention to the allegations in the FIR and submits that, the alleged offences have been disclosed, and therefore, this Court may not consider the prayer for quashing of the FIR. It is submitted that there was ill-treatment and harassment on account of displeasure of the accused that, respondent no.2 gave birth to three daughters, and also there was demand of Rs.2 lacs from the parents of respondent no.2.

6. We have carefully considered the submissions of the learned counsel appearing for the applicants, learned APP appearing for

respondent—State, and the learned counsel appearing for respondent no.2. With their able assistance, we have perused the pleadings in the Application and grounds taken therein, annexures thereto, reply filed by respondent no.2, and also the rejoinder filed by the applicants. Upon careful perusal of the investigation papers, it appears that, applicant no.1 Moizuddin Azizuddin Quazi, applicant no.2 Tahesin Begum Azizuddin Qauzi, applicant no.4 Rameezoddin Azizuddin Qauzi, applicant no.8 Mohammad Nazeeroddin Raziur Raheman Farooqui, applicant no.9 Farhat Sultana Mohammad Nazeeroddin Farooqui, applicant no.10 Alimunisa Begum Abdul Mannan Farooqui, applicant no.11 Abdul Mannan Raziur Raheman Farooqui and applicant no.12 Fayazuddin Raziur Raheman Farooqui are residing at Pathri, Taluka Pathri, District Parbhani. Applicant no.3 Azimuddin Azizuddin Qauzi is residing at Hyderabad. Applicant

no.5 Shaziya Begum Muquibuddin Qauzi and applicant no.6 Muquibuddin Muneebuddin Qauzi are residing at Parbhani. Applicant no.7 Aliya Fatema Ahmed Nurul Ambiya Qauzi is residing at Nanded.

7. Therefore, upon perusal of the investigation papers, it is abundantly clear that, all the applicants except the applicant nos.3, 5, 6 and 7 are residing at Pathri, District Parbhani. We do not wish to enter into controversy whether the applicants are residing at Pathri or at other places.

8. Upon perusal of the allegations as against applicant nos.1, 2, 4, 8, 9 to 12 the alleged offences have been disclosed, and therefore, needs further investigation. Therefore, we are not inclined to entertain their application for quashing of FIR.

9. As already observed, even investigation papers show that, applicant

no.3 is residing at Hyderabad [Andhra Pradesh]. Applicant no.5 and applicant no.6 are residing at Magdumpura, Taluka and District Parbhani. Applicant no.7 is residing at Nanded. It appears that applicant no.5 is sister of applicant no.1 and applicant no.6 is her husband. Applicant no.7 is also married sister of applicant no.1.

10. In that view of the matter, since applicant nos.3, 5, 6 and 7 are not residing at Pathri, Taluka Pathri, District Parbhani, and there are no specific overt acts attributed to them. We are of the opinion that further continuation of the proceedings based upon the FIR bearing Crime No.166/2016 registered at Majalgaon City Police Station, Tq. Majalgaon, District Beed, for the offence punishable under Section 498A, 323, 504, 506 r/w.34 of IPC, as against applicant nos.3, 5, 6 and 7 would be abuse of process of law.

11. The Supreme Court in the case of **Geeta Mehrotra and another Vs. State of Uttar Pradesh and another**⁸ 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**⁹ 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

8 (2012) 10 SCC 741

9 (2000) 3 SCC 693

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."

12. The Supreme Court in the case of **"State of Haryana V/s Bhajan Lal¹⁰** 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

10 AIR 1992 SC 604

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.*

13. The case of applicant nos.3, 5, 6 and 7 is covered in categories 5 and 7 of the aforesaid categories.

14. In that view of the matter, FIR bearing Crime No.166/2016 registered at Majalgaon City Police Station, Tq. Majalgaon, District Beed, for the offence punishable under Section 498A, 323, 504, 506 r/w. 34 of IPC, is quashed and set aside to the extent of applicant no.3 Azimuddin Azizuddin Qauzi, applicant no.5 Shaziya Begum Muquibuddin Qauzi, applicant no.6 Muquibuddin Muneebuddin Qauzi and applicant no.7 Aliya Fatema w/o. Ahmed Nurul Ambiya Qauzi.

15. Application to the extent of

applicant nos.1, 2, 4, 8 to 12 stands rejected.

16. Though we have rejected the application of applicant nos.1, 2, 4, 8 to 12, the same shall not be construed as an impediment for them, in case they wish to avail appropriate remedy as available in law in the event of filing of charge-sheet by the Investigation Officer.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

DDC