

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

CRIMINAL APPLICATION NO. 5903 OF 2016

1. Vijay S/o Purushottamrao Chinchwankar
Age : 65 years, Occ : Retired,
R/o Rajguru Nagar, Tq. Khed,
Dist. Pune.
2. Satish S/o Achyutrao Chinchwankar
Age : 55 years, Occ : Lawyer at
Sessions Court, Nanded,
Dist. Nanded
R/o Gokul Nagar, Nanded,
Dist. Nanded.
3. Gajendra S/o Vijay Chinchwankar
Age : 37 years, Occ : Service,
R/o 908, Sudatta Sankul,
Sai Nagar, Hingne Kh., Pune,
Dist. Pune.
(Rejected as per Court's order
dated 11/12/2016)

..APPLICANTS

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Police Station, Itwara,
Dist. Nanded.
2. Sow. Ishwari W/o Gajendra Chinchwankar
Age : 31 years, Occ : Household,
R/o C/o Sudhakar Rao Ambulgekar (Nandedkar),
Pathak Galli, Kandhar Tehdi,
Near Mittika Sher,
Nanded, Tq. & Dist. Nanded.

..RESPONDENTS

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Advocate for Applicants : Mr.O.B. Boinwad
APP for Respondent/State : Mr. D.R. Kale
Advocate for Respondent no.2 : Mr. N.S. Gharekar

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**CORAM : S.S. SHINDE &
K.K. SONAWANE, JJ.
DATE : 22nd February, 2017**

ORAL JUDGMENT : (PER S.S. SHINDE, J)

Rule. Rule, returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. So far as applicant no.3 – Gajendra S/o Vijay Chinchwankar is concerned, already his application is rejected by this Court on 1st December, 2016, therefore, the adjudication of this application is confined only to applicant nos. 1 and 2.

3. The learned counsel appearing for the applicants invited our attention to the allegations made in the First Information Report and submits that, if the allegations in the F.I.R. are taken at its face value and read in its entirety, the alleged offences

are not disclosed. Therefore, the First Information Report qua applicant nos.1 and 2 deserves to be quashed.

4. On the other hand, the learned counsel appearing for the respondent no.2, relying upon the allegations in the F.I.R., submits that, the allegations in the F.I.R. will have to be read as it is and can be tested only during the trial. Therefore, he submits that, the application may be rejected.

5. The learned A.P.P. appearing for the Respondent/State, relying upon the investigation papers, submits that, the allegations in the F.I.R. need to be investigated and taken to the logical end and hence the application may be rejected.

6. Upon hearing the learned counsel

appearing for the parties and upon perusal of the allegations in the First Information Report, we are of the opinion that, the F.I.R. so far applicant no.1 - Vijay Purushottamrao Chinchwankar and applicant no.2 - Satish Achyutrao Chinchwankar is concerned deserves to be quashed and set aside for the reasons set out hereinbelow.

7. In the F.I.R. the allegations as against applicant nos.1 and 2 are as under :-

“शिवीगाळ केली आणि सासरे श्री. विजय चिंचवनकर यांचे सांगण्यावरून चुलत सासरे श्री. सतीश चिंचवनकर यांनी फोनवरून "माझ्या पुतण्या जर पंधरा मिनिटांत माझ्या समोर हजर केले नाही तर तुमच्या सर्वांवर कलम ३०६, ३०२ अंतर्गत आत्महत्येस प्रवृत्त केले अशी तक्रार करेन अशी धमकी दिली.”

8. Upon careful perusal of the aforestated allegations, which are extracted hereinabove from the F.I.R., it is abundantly clear that, even if the entire allegations in the F.I.R. are taken at its face value and

read in its entirety the ingredients of the alleged offences are not attracted. The allegations are general in nature and alleged threats given are by telephonic message. Even if the allegations in the supplementary statements are read conjointly with the allegations in the F.I.R., the alleged offences are not disclosed against applicant nos.1 and 2.

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 of the judgment of the Supreme Court in the case of

¹ (2012) 10 SCC 741

G.V.Rao Vs.L.H.V. Prasad² 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 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'

2 (2000) 3 SCC 693

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.

- 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. In that view of the matter, keeping in view the categories laid down in case of **Bhajanlal (supra)**, the case of applicant nos. 1 and 2 falls within the category nos.1, 2 and 5 of the aforesaid categories. In the result, the F.I.R. to the extent of applicant no.1 – Vijay S/o Purushottamrao Chinchwankar

and applicant no.2 — Satish Achyutrao Chinchwankar is quashed and set aside. The application is partly allowed and the same stands disposed of. Rule is made absolute accordingly.

(K.K. SONAWANE, J.)

(S.S. SHINDE, J.)

sga/-

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