

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

CRIMINAL APPLICATION NO.6117 OF 2016

1. Charandas s/o Hari Chavhan,
Age : 35 years, Occu. Agriculture.
2. Hari s/o Dubala Chavhan,
Age : 70 years, Occu. Agriculture.
3. Purandas s/o. Hari Chavhan,
Age : 42 years, Occu. Agriculture
4. Dhanraj s/o. Hari Chavhan,
Age : 32 years, Occu. Agriculture
5. Gorakh s/o. Hari Chavhan,
Age : 30 years, Occu. Agriculture
6. Sau. Tarabai w/o. Dhanraj Chavhan,
Age : 30 Years, Occu. Household.
7. Sau. Sharadaba @ Kamalbai Purandas
Chavhan, Age 38 Years, Occu. Household

All R/o. village Valthan,
Tq.Chalisgaon, District Jalgaon

APPLICANTS

VERSUS

1. The State of Maharashtra,
Through Kannad Rural Police Station,
Tq. Kannad, District Aurangabad.
2. Sau. Mohini @ Shalu w/o Charandas
Chavhan, Age : 30 years, Occu. Household,
R/o. Village Valthan, Tq.Chalisgaon,
Dist. Jalgaon
At present Bhambarwadi, Tq.Kannad,
District Aurangabad.

RESPONDENTS

...
Mr.Nilesh N.Desale, Advocate for the
applicants
Mr.S.Y.Mahajan, APP for the Respondent/State
Mr.S.C.Yeramwar, Advocate for respondent no.2
...

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

Reserved on : 24.04.2017
Pronounced on : 26.04.2017

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

1. Heard.

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

3. It is the case of the applicants
that the marriage between applicant no.1 and
respondent no.2 was solemnized on 11th May,
2003. Applicant no.2 is the father of
applicant no.1. Applicant nos.3 to 5 are the
brothers of applicant no.1. Applicant no.6 is
the wife of applicant no.4, and applicant
no.7 is the wife of applicant no.3. Applicant

nos.3 and 7 are residing separately in the village Valthan. Applicant nos.4 and 6 are residing separately in the same village. Even applicant nos.2 and 5 are also residing in the house of applicant no.3.

4. It is further the case of the applicants that after the marriage, applicant no.1 and respondent no.2 were only residing together in the same village. Applicant no.1 and respondent no.2 were cohabiting peacefully, since their marriage i.e. from 11th May, 2003. Out of the said wedlock, applicant no.1 and respondent no.2 begotten children, namely, Siddhesh [aged 10 years] and Kalpesh [aged 7 years]. There was no harassment or ill-treatment at the hands of applicant no.1 or at the hands of other applicants during cohabitation with the applicant no.1. After lapse of more than 13 years from the date of marriage, respondent no.2 lodged false and fabricated complaint

against applicants on 17th August, 2016. It is falsely alleged by the informant that after one year of the marriage, the applicants started causing ill-treatment and further harassed on account of non-fulfillment of illegal demand of Rs.1,00,000/- for establishment of Kirana Shop. It is further alleged that the father of the informant has paid Rs.50,000/- prior to one year of the complaint. It is pertinent to note that the complaint is lodged by the informant after lapse of 13 years of the marriage. On the contrary, it is alleged that after one year of the marriage, there was ill-treatment. However, during 12 years not a single incident of lodging the complaint against the applicants or any specific allegation is leveled in the complaint regarding harassment or ill-treatment to the informant at hands of applicants. Accordingly, FIR bearing Crime No.I-62/2016 is registered on 17th August,

2016, with Kannad Rural Police Station, Taluka Kannad, District Aurangabad, for the offences punishable under Sections 498 (A), 323, 504 r/w.34 of the Indian Penal Code against the present applicants.

5. It is further the case of the applicants that thereafter the police authorities have recorded the statements of the parents of the informant on 23rd August, 2016. The police authorities further recorded the statements of maternal uncle of the informant on 23rd August, 2016. After completion of the investigation, the police authorities have filed the charge-sheet bearing No.30/2016, before the Chief Judicial Magistrate, Kannad, on 30th September, 2016.

6. The learned counsel appearing for the applicants invites our attention to the grounds taken in the application and submits that the marriage between applicant no.1 and

respondent no.2 was solemnized on 11th May, 2003, and the FIR making wild and omnibus allegations is filed after 13 years of the marriage. He submits that other applicant nos.2 to 7 are no way concerned with the matrimonial affairs of applicant no.1 and respondent no.2. Therefore, he submits that, the continuation of the further proceedings would cause great prejudice and mental agony to the applicants since an allegations made in the FIR are general in nature and far from truth.

7. On the other hand, the learned APP appearing for respondent-State and the learned counsel appearing for respondent no.2 submit that after detailed investigation, the charge-sheet has been filed. The prosecution witnesses have supported the allegations in the FIR, and therefore, it is only during trial the statements of the witnesses can be tested.

8. We have heard the learned counsel appearing for the applicants, learned APP appearing for respondent-State, and the learned counsel appearing for respondent no.2 at length. With their able assistance, perused the allegations in the FIR and also the statements of the witnesses. So far as applicant no.1 i.e. husband of respondent no. 2 is concerned, an allegations made in the FIR clearly disclosed alleged offences against him, and therefore, the FIR/charge-sheet qua him cannot be quashed.

9. It appears that the marriage between applicant no.1 and respondent no.2 had taken place 13 years back. Out of the said wedlock, respondent no.2 begotten children, namely Siddhesh aged 10 years and Kalpesh aged 7 years. There are specific allegations of beating, ill-treating and cruelty at the hands of applicant no.1. Therefore, his application deserves no consideration.

10. So far as other applicants i.e. applicant nos.2 to 7 are concerned, there are general allegations that there was demand of Rs.1,00,000/- so as to establish grocery shop. There is no any specific overt act attributed to each of the applicants. There are general allegations without mentioning specific incident or dates of such incident. It is also relevant to mention that the marriage had taken place 13 years back and if at all there was ill-treatment, immediately after one year of the marriage, respondent no.2 ought to have protested by resorting to appropriate proceedings. However, the FIR is lodged belatedly in the year 2016. Therefore, an allegations as against applicant nos.2 to 7 appears to be afterthought and also general in nature. It is also relevant to mention that applicant no. 1 and respondent no.2 were only residing together in the same village. It is brought

on record by the applicants that applicant nos.3 and 7 are residing separately in the village Valthan. Applicant nos.4 and 6 are residing separately. Applicant nos.2 and 5 are also residing in the house of applicant no.3. It appears that applicant nos.2 to 7 are residing separately and not in the matrimonial house. Be that as it may, upon perusal of the allegations in the FIR and the statements of the witnesses, who have only reiterated and repeated version stated in the FIR stereo type manner, we are of the opinion that, an ingredients of an alleged offences are not attracted and consequently alleged offences are not disclosed as against applicant nos.2 to 7.

11. 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

¹ (2012) 10 SCC 741

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**² 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

2 (2000) 3 SCC 693

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 Lal***"³ held that, in categories mentioned in para 108 of the said judgment, the High Court would be able to quash the F.I.R. Para 108 is reproduced herein below:

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

3 AIR 1992 SC 604

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.2 to 7 is covered under category nos.1, 2 and 7. In the light of the discussion hereinabove, we pass the following order:

ORDER

- i] The application to the extent of applicant no.1 stands rejected.
- ii] The application to the extent of applicant nos.2 to 7 is allowed in terms of prayer clause-C.
- iii] Rule is made absolute on above terms. The Criminal Application is allowed partly, and the same stands disposed of accordingly.
- iv] An observations made hereinabove are *prima facie* in nature and the trial Court should not get influenced during trial by the said observations.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE