

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5558 OF 2016

- 1) Subhash s/o Bansi Sonawane,
Age-43 years, Occu:Labour,
R/o-Line Nagar, Waluj,
Tq-Gangapur, Dist-Aurangabad,
- 2) Kusumbai w/o Bansi Sonawane,
Age-70 yeards, Occu:Household,
R/o-Line Nagar, Waluj,
Tq-Gangapur, Dist-Aurangabad,
- 3) Kishor s/o Ratan Nade,
Age-45 years, Occu:Labour,
R/o-Line Nagar, Waluj,
Tq-Gangapur, Dist-Aurangabad,
- 4) Ujwala w/o Sukhlal Rajput (Dongarjal),
Age-52 yeards, Occu:Household,
R/o-Line Nagar, Waluj,
Tq-Gangapur, Dist-Aurangabad,
- 5) Rekha w/o Ramchandra Rode,
Age-35 years, Occu:Household,
R/o-Line Nagar, Waluj,
Tq-Gangapur, Dist-Aurangabad,
- 6) Lalita w/o Gangaram Mhaske,
(As per FIR Kalpana Mhaske),
Age-32 years, Occu:Household,
R/o-Line Nagar, Waluj,
Tq-Gangapur, Dist-Aurangabad,

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through the Investigation Officer,
Police Station Waluj,
Tq-Gangapur, Dist-Aurangabad,
- 2) Tara w/o Uttam Bhandari,
Age-45 years, Occu:Household,
R/o-Line Nagar, Waluj,
Tq-Gangapur, Dist-Aurangabad.

...RESPONDENTS

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Mr.J.M. Murkute Advocate for Applicants.
Mr.S.Y. Mahajan, Additional Public Prosecutor
for Respondent No.1.
Mr.M.B. Sandanshiv Advocate for Respondent
No.2.

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WITH**CRIMINAL APPLICATION NO.6349 OF 2016**

Ashabai w/o Madhukar Chavan,
Age-48 years, Occu:Household/ Labour,
R/o-Line Nagar, Waluj,
Tq-Gangapur, Dist-Aurangabad.

...APPLICANTS**VERSUS**

- 1) The State of Maharashtra,
Through the Investigation Officer,
Police Station Waluj,
Tq-Gangapur, Dist-Aurangabad,

- 2) Tara w/o Uttam Bhandari,
Age-45 years, Occu:Household,
R/o-Line Nagar, Waluj,
Tq-Gangapur, Dist-Aurangabad.

...RESPONDENTS

...

Mr.J.M. Murkute Advocate for Applicants.
Mr.S.Y. Mahajan, Additional Public Prosecutor
for Respondent No.1.
Mr.M.B. Sandanshiv Advocate for Respondent
No.2.

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

DATE OF RESERVING JUDGMENT :24TH FEBRUARY,2017.

DATE OF PRONOUNCING JUDGMENT: 1ST MARCH, 2017.

JUDGMENT [PER S.S. SHINDE, J.]:

1. Both these Applications are filed taking exception to one and the same First Information Report and hence these Applications are being disposed of by this common Judgment and order.

2. Both these Applications are filed by the Applicants praying therein to quash and set aside the First Information Report No.153 of 2016

registered at Police Station Waluj, Taluka-Gangapur, District-Aurangabad for the offence punishable under Section 306 read with 34 of the Indian Penal Code.

3. The learned counsel appearing for the Applicants submits that the Applicants are falsely implicated in the criminal case. They have not committed any crime as alleged by the informant. The Applicants are not the neighbourers of the informant and on the day of the incident they were not members of the Gram Panchayat. The Applicants are just residents of the said vicinity but the informant has falsely implicated them since they have made signatures on the representation dated 18th June 2016 in respect of illegal construction. It is submitted that the police were not inclined to register the First Information Report, however the informant kept the dead body of deceased Uttam Bhandari in the police station and intimated that unless the First Information Report is registered

against the Applicants, she will not take the dead body and perform the funeral. It is submitted that upon reading allegations in the First Information Report, ingredients of the alleged offences have not been attracted and consequently alleged offences are not disclosed against the Applicants. It is submitted that the Applicants never instigated or abetted or aided for commission of suicide by the deceased Uttam Bhandari. He further invites our attention to the grounds taken in the Applications and submits that the Applications deserve to be allowed. In support of his contention that alleged offences are not disclosed against the Applicants and therefore First Information Report deserves to be quashed, the learned counsel appearing for the Applicants, placed reliance on the reported Judgments of the Supreme Court, in the case of **Madan Mohan Singh vs. State of Gujarat and another¹, State of Kerala and others vs. S. Unnikrishnan Nair and others²**.

¹ 2010 A.I.R. S.C.W. 5101

² (2015) 9 Supreme Court Cases 639

the learned counsel appearing for the Applicants in support of his submissions, also placed reliance on the unreported Judgments of the Bombay High Court, Bench at Aurangabad in the case of **Tushar s/o Mahadeorao Arsul vs. State of Maharashtra and another (Criminal Application No.3683 of 2012)** decided on 26th November 2012, **Mahesh s/o Shashikant Jape and others vs. the State of Maharashtra and another (Criminal Application No.4362 of 2015)** decided on 11th December 2015.

4. Learned Additional Public Prosecutor appearing for the State, relying on the investigation papers and in particular statements of various witnesses, submits that after completion of investigation charge-sheet is filed by the Investigating Officer. There is enough material and trial can proceed on the basis of said material, therefore this Court may not consider the prayer of the Applicants to quash the

First Information Report.

5. Learned counsel appearing for Respondent No.2 invites our attention to the affidavit in reply and submits that the Applicants consistently harassed the deceased Uttam Bhandari and as a result of harassment by them, deceased was not left with any option but to commit suicide. Therefore, he submits that Application may be rejected.

6. We have heard the learned counsel appearing for the parties at length. With their able assistance we have perused the grounds taken in the Applications, annexures thereto, reply filed by Respondent No.2 and the investigation papers made available for our perusal. These Applications take exception only to the First Information Report though the charge-sheet is filed by the Investigating Officer as it is apparent from the perusal of the investigation

papers. We have carefully perused the allegations in the First Information Report and the statements of the witnesses. It appears that deceased Uttam Bhandari was constructing a toilet nearby his house. The Applicants went there and then further altercations took place and Uttam Bhandari committed suicide. The alleged acts attributed to the Applicants and commission of suicide by Uttam Bhandari is in proximate date and time. There are statements of witnesses. We do not wish to enter elaborately on merits of the matter since the charge-sheet is filed before the concerned Court.

7. In that view of the matter, it may be open for the Applicants to avail the appropriate remedy of filing application for discharge before the concerned Court in case charge is not framed by the trial Court. Therefore, we are not inclined to entertain the prayer of the Applicants for quashing the First Information Report. In the result, leaving open the remedy available to the

Applicants to file application for discharge before the concerned Court, we reject both these Applications.

8. However, we make it clear that the observations made herein above are prima facie in nature and the concerned Court should not get influenced by the said observations either while considering the application for discharge or during the trial, as the case may be.

[K.K. SONAWANE, J.]

asb/FEB17

[S.S. SHINDE, J.]