

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

CRIMINAL APPLICATION 6498 OF 2016

- 1] Vasant S/o Yadavrao Motewar
Age 71 years, Occu:Nil
R/o Parimal Nagar, Nanded.
- 2] Sau.Minakshi W/o Vasantrao Motewar
Age : 65 years, Occu: Household
R/o as above.
- 3] Dr.Vivek S/o Vasantrao Motewar
Age 40 years, occu : Medical Practitioner
R/o as above.
- 4] Anant Yadavrao Motewar
Age 65 years, Occu.Agriculture,
R/o Sarsam (Bk), Taluka-Himayat Nagar,
District – Nanded.
- 5] Sainath S/o Yadavrao Motewar
Age 55 years, Occu.Business,
R/o Arni, District-Yeotmal.
- 6] Vyankat S/o Pandharinath Borlepwar
Age 73 years, Occu.Nil
R/o Mayur Vihar Colony,
Pawadewadi Naka,
Nanded.
- 7] Eknath S/o Shankarrao Pande
Age 73 years, Occu Nil
R/o Pushpanagar,
Nanded.
- 8] Sau.Vidya Sandesh Wattamwar
Age 42 years, Occu.Household
R/o Ganesh Chintamani Nagar,

Kothrud (Gramin) Haveli,
District-Pune.

..PETITIONERS
[Orig.Accused]

Versus

1] The State of Maharashtra,
Through Police Station Officer
Bhagya Nagar, Police Station,
Nanded, District Nanded
(Copy to be served on P.P.
High Court Bench at Nanded)

2] Dr.Sonali W/o Vikas Motewar
Age 39 years, Occ : Medical
Practitioner, R/o.
Dist.

..Respondents

Mr.S.S.Rathi, Advocate for applicants.
Mrs. D.S.Jape, APP for Respondent State.
Respondent No.2 Party in person present.

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

**RESERVED ON : 29/11/ 2017.
PRONOUNCED ON :05/12/2017.**

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

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

2] This is an application under Section 482 of Cr.P.C. The applicants are seeking to quash FIR in Crime No.229/2016 registered with Bhagya Nagar Police Station, Nanded for the offences punishable under Sections 498-A, 323, 504, 506, read with Section 34 of IPC on a report filed by respondent no.2.

3] Shortly stated, the allegations in the FIR are to the effect that the respondent no.2 was married to Dr.Vikas who is the elder son of the applicants 1 and 2, on 2/7/2002. The couple is Medical Practitioners by profession. The applicant no.3 is the younger son of the applicants 1 and 2 who is also a Medical Practitioner. In the year 2006, the applicants 1 to 3 harassed her by saying that she and her husband should not practice at Nanded and drove them out of the house. She was subjected to cruelty by physically and mentally by making a demand of Rs.ten lakhs. Since then, the couple started residing in Mumbai. However, the husband of the respondent no.2 continued to visit Nanded in connection with his Medical practice. The applicants 4 and 5 are the real brothers of the applicant no.1. The applicant no.6 is his distant relative. Applicant no.7 is his friend and the applicant no.8 is the daughter of the applicants 1 and 2. It is alleged that all the applicants with a view that the respondent no.2 and her husband should not practice at Nanded, harassed them and threatened them to kill. Lastly, it is alleged that on 24/9/2016, when the respondent no.2 with her daughter had come to Nanded, the applicants called them to their house and threatened to kill them. The respondent no.2 making such allegations lodged the FIR on 3/10/2016 and the offence has been registered as mentioned above.

4] According to the learned advocate for the applicants, since beginning the respondent no.2 has been greedy and was even involved in a litigation with her own father and brother demanding her share in the property. She alongwith her husband has adopted every means to extract money from her parents and brother and it is only by way of compromise arrived at in the Civil Suit, after receiving

a huge amount, the dispute could be settled. The learned advocate submitted that the respondent no.2 raised a similar demand with the applicant no.1 and had demanded a share in the house property which is in fact his self acquired property. He somehow paid her an amount of Rs.2,00,000/- in the year 2009 and again paid an amount of Rs.3,50,000/- to her in the year 2013 by way of cheque. However, the respondent no.2 did not stop exerting pressure on the applicant no.1 and he had to file Regular Civil Suit No.122/2013 against the respondent no.2 and her husband Dr.Vikas seeking prohibitory orders. Due to sheer love and affection, the matter was compromised and the respondent no.2 received an amount of Rs.5,50,000/- from the applicant no.1 and the Suit was disposed of in terms of the compromise on 26/2/2013.

5] According to the learned advocate for the applicants, the respondent no.2 continued to demand money from the applicants 1 and 3 even after such compromise was entered into. The applicant no.1 transferred an amount of Rs.60,000/- and Rs.2,00,000/- by NEFT to the respondent no.2. Besides, he also paid her Rs.1,00,000/- in cash in view of financial need of her daughter. In spite of receiving such amounts from time to time, the respondent no.2 and her husband were not content and they started extending threats to the applicants 1 to 3 for extorting money. The applicant no.1 had to file a police complaint on 1/5/2015 with Bhagya Nagar Police Station, Nanded. Even thereafter, he had to approach the police on 30/8/2015, 15/9/2016, 19/9/2016 and 6/10/2016 seeking protection from respondent no.2. Even he had to file execution proceeding for enforcement of the compromise decree arrived at in Regular Civil Suit No.122/2013 since she had committed breach of

the injunction. He had to apply even for protection. Annoyed by such events, the respondent no.2 has without any basis lodged the impugned FIR on 3/10/2016. Thus according to the learned advocate, applying principles laid down in the case State of Haryana Versus Bhajanlal; AIR 1992 S.C. 604, the allegations in the FIR even if accepted at their face value do not constitute the offences registered against the applicants, the allegations are inherently improbable and are prompted by *mala fides* and therefore, the FIR deserves to be quashed.

6] The respondent no.2 has appeared in person and has filed her affidavit in reply (page 64). We have heard her in person in presence of her husband. She has denied all the allegations in the application. She has, in consonance with her allegations in the FIR, stated that she was consistently harassed for years by all the applicants who were insisting her to bring an amount of Rs.ten lakhs from her father. Even though she alongwith her husband and daughter have been staying in Mumbai, they were visiting house of the applicants 1 to 3 at Nanded during festivals and marriage ceremonies and she was subjected to cruelty during such festivals. Even in the month of January 2013, the applicants 1 to 3 demanded money from her and she had to lodge a complaint at Bhagya Nagar Police Station, Nanded on 31/1/2013. They forcibly obtained her signature and that of her husband on various papers in the month of February 2013 and since thereafter, severed all their relations with them. However, before such severance, applicants 1 to 3 had agreed to pay respondent no.2 and her husband an amount of Rs.12,00,000/- with interest by way of compensation for forcing the respondent and her husband to discontinue their medical practice at Nanded. She admitted to have

received Rs.60,000/- in the year 2014, Rs.2,00,000/- in the year 2015 and Rs.40,000/- on 18/6/2016. She has then submitted that on 29/9/2016 under the pretext of paying remaining amount of Rs.9,00,000/- the applicants called her and her daughter to the house of the applicant no.1 but the applicants started abusing them and refused to pay the money. All the applicants threatened to kill her and again raised the demand for an amount of Rs.10,00,000/- and as a result, she had to file the impugned FIR.

7] The respondent no.2 also submitted that since after the marriage, she was constantly subjected to ill treatment by raising demand for an amount of Rs.10,00,000/- and that is why all the ingredients for constituting offences can be made out from the FIR. She also cited the decisions in the case of Didigam Bakshapati & Anr V/s State of A.P.; 2008 Cr.L.J. (SC) 724 and in the case of Swaran Singh and Ors V/s State; 2008 Cr.L.J.(SC) 4369 and submitted that at this juncture a minute scrutiny of the allegations in the FIR cannot be undertaken and correctness or otherwise of the allegations cannot be ascertained by invoking powers under Section 482 of Cr.P.C. and she is ready even to face the NARCO and POLYGRAPH tests and the same be done even in respect of the applicants.

8] We have also heard learned APP, who has opposed the application.

9] The law as far as exercise of powers under Section 482 of Cr.P.C. for quashing FIR is crystallized by Supreme Court in the case of Bhajanlal (supra) with following guidelines :

“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 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] True it is that it is equally well settled as has been submitted by the respondent no.2 by referring to the decisions of the Supreme Court (supra) that at this stage correctness or otherwise of the allegations in the FIR cannot be ascertained by invoking the powers under Section 482 of Cr.P.C. and it is only to be ascertained whether *prima facie* ingredients for constituting offences can be made out from the bare reading of the FIR.

11] Bearing in mind these principles, if we carefully peruse the record, it is more than apparent that as far as the applicants 4 to 9 are concerned, the allegations in the FIR are clearly vague and absent in material particulars. Rather, there are no sufficient allegations which can be said to be attributing role to each of them. Indeed it is trite

that an FIR is not expected to be providing for all and every details. However, at the same time, it is expected that there has to be atleast bare minimum allegations attributing some or the other role to the accused. Except vague and general reference to their involvement, the allegations are conspicuously absent as against respondents 4 to 9.

12] It is pertinent to note that even though in the FIR it has been alleged that the applicants have subjected the respondent no.2 to harassment since the year 2006, the fact of there being a compromise arrived at in the Civil Court in the year 2013, is admitted. The copy of Regular Civil Suit No.122/2013 (Annexure "C") with the application apparently shows that the applicant no.1 had filed a Suit against respondent no.2 and her husband seeking perpetual injunction restraining them from obstructing his possession in the residential house at Nanded. It is also apparent that by the order dated 26/2/2013, on the compromise purshis Exh.17 filed therein, the parties had settled the dispute wherein the applicant no.1 had agreed to pay Rs.5,50,000/- to the respondent no.2 and her husband. Out of it, an amount of Rs.2,00,000/- was already paid and the remaining amount of Rs.3,50,000/- was paid in the form of cheques which were also acknowledged by them. It is conspicuous that in lieu of having received such amount, the respondent no.2 and her husband had relinquished all their rights and interest in the suit house property and even it was specifically mentioned that the applicant No.1 could transfer the suit house property to his other son i.e. the applicant no.3 herein. The respondent no.2 and her husband also agreed not to obstruct the applicant No.1 in his peaceful possession over the suit house property and also agreed that they would not obstruct the applicant no.3 in its enjoyment after demise of the applicant no.1.

We are referring to these circumstances only to point out that inspite of the disputes between the parties since the year 2006 and the harassment that was allegedly meted out to the respondent no.2 the parties had settled the dispute by way of compromise. Therefore the circumstance clearly improbabalises that there could have been any such harassment as alleged in the FIR and as alleged by the respondent no.2 prior to such compromise in 2013. To our mind it is beyond comprehension of a woman of ordinary prudence to have entered into such a compromise inspite of there being such persistent demand for money and harassment meted out to her. It seems inherently improbable that had there been any such demand and ill treatment meted out to the respondent no.2, she would have entered into any such compromise, that too relinquishing her right and interest in the house property. Therefore, we are unable to persuade ourselves even to accept *prima facie* this allegation about ill treatment atleast prior to the year 2013.

13] Assuming for the sake of argument that there was any such demand and ill treatment meted out to the respondent no.2 prior to the year 2013, she has apparently forgotten and forgiven everything and everybody by entering into such a compromise without any demur. It is necessary to note that the complaints filed by the applicant no.1 with police on 1/5/2015 (Annex."E") on 30/8/2015, 15/9/2016 and 19/9/2016 (Annex."F" Colly) *prima facie* show that in fact the applicant no.1 has been under constant pressure and threat from the respondent no.2 and her husband and had to repeatedly approach the police since they continued to raise demand for money from the applicant No.1 inspite of a compromise having been entered into in the Civil Suit. The execution proceeding (Exh."G") also had to

be filed on 26/7/2016 since respondent no.2 allegedly committed breach of the terms of compromise. It is true that even respondent no.2 had once filed a complaint on 31/1/2013 with Bhagya Nagar Police Station, Nanded (Exh.A, page 71). However, this complaint was filed in the month of January 2013 whereas the compromise was entered into in February 2013. We are pointing out these circumstances to show that the respondent no.2 never seems to have approached police by lodging any complaint since the day she entered into compromise till she filed the impugned FIR. The intervening period from the year 2013 till the filing of the FIR is crucial and except the vague and bald statements in the impugned FIR, there is no material apparently to *prima facie* show that the applicants and particularly applicants 1 to 3 having ever subjected her to ill treatment or had any occasion to do that much less to coerce her to succumb to their demand for an amount of Rs.100000/-.

14] On the contrary, it is the applicant no.1 who had to repeatedly approach the police since he was perceiving threats from the respondent no.2 and her husband. This circumstance to our mind is important enough to infer that the impugned FIR has been lodged with a *mala fide* intention besides the contents being inherently improbable. In our view, the instant matter is squarely covered by categories no.5 and 7 from the case of Bhajanlal (*supra*) and the impugned FIR has been lodged manifestly with *mala fides* and with an ulterior motive to wreck vengeance or with a personal grudge.

15] In view of the discussion hereinabove, the application deserves to be allowed and the impugned FIR is liable to be quashed.

16] The application is allowed. The impugned FIR is quashed and set aside. Rule is made absolute.

(MANGESH S. PATIL,J.)

(S.S.SHINDE ,J.)

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