

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

CRIMINAL APPLICATION NO.6879 OF 2016

1. Rajendra s/o.Digamber Pawar,
Age 40 Years, Occ. Business,
R/o. Jalan Nagar, Plot no.7,
Railway Station, Aurangabad,
Dist: Aurangabad.
2. Vijaya w/o.Digamber Pawar,
Age: 65 Years, Occu: House Hold
R/o: Vivekanad Chowk, Nanded Naka,
Latur Tq. & Dist. Latur.
3. Digamber s/o.Jivlag Pawar,
Age: 70 years, Occu: Ex-Service Man,
R/o: Vivekanad Chowk, Nanded Naka,
Latur Tq. & Dist. Latur.
4. Baby Saroja w/o.Angad Biradar,
Age: 43 years, Occ: Service &
Social work,
R/o: Vivekanad Chowk, Nanded Naka,
Latur Tq. & Dist. Latur. **APPLICANTS**

VERSUS

1. The State of Maharashtra,
Through Satara Police Station,
Aurangabad.
2. Surekha w/o Rajendra Pawar,
Age: 45 years, Occu: Service,
R/o. Jalan Nagar, Plot No.7,
Railway Station, Aurangabad,
Dist: Aurangabad. **RESPONDENTS**

...

Mr.S.A.Nagarsoge, Advocate for the applicants
Mr.M.M.Nerlikar, APP for the Respondent No.1/
State
Mr.R.D.Sanap, Advocate for respondent No.2.

...

**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 20.07.2017
Pronounced on : 28.07.2017

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

1. Heard.

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

3. This Application is filed for
quashing and setting aside the First
Information Report vide Crime No.270/2016
registered at Satara Police Station,
Aurangabad, on 26th July, 2016, and further
criminal proceeding bearing R.C.C.No.
2639/2016, pending before the learned Chief

Judicial Magistrate, Aurangabad, against the applicants for the offence punishable under Section 498-A, 323, 504 and 506 r/w. 34 of the Indian Penal Code.

4. The learned counsel appearing for the applicants invites our attention to the allegations in the FIR, and submits that the allegations as against applicant nos.2 to 4 are inherently improbable inasmuch as the marriage of the informant with applicant no.1 was solemnized on 29th December, 1996. Thereafter, the informant stayed in the matrimonial home at Latur till 1st February, 2000. It is submitted that thereafter, the informant shifted to Aurangabad, and since then residing with her brother. It is submitted that the FIR is belatedly registered on 26th July, 2016, making allegations therein from the year 1998. It is submitted that the applicants had no occasion

to travel to Aurangabad and to visit the house of the brother of the informant, and give her ill-treatment or harassment. The distance between Aurangabad and Latur is more than 260 kilo meters. It is submitted that no any specific incident with specific date has been mentioned in the FIR. He submits that the allegations are omnibus, and therefore, the FIR deserves to be quashed.

5. On the other hand, the learned APP appearing for the respondent-State, and the learned counsel appearing for respondent no.2 relying upon the allegations in the FIR and investigation papers, submits that, the alleged offences have been disclosed, and therefore, further investigation is necessary.

6. We have given careful consideration to the submissions of the learned counsel appearing for the applicants, the learned APP

appearing for the respondent—State, and the learned counsel appearing for respondent no.2. With their able assistance, we have perused the allegations in the FIR, and also the statements of the witnesses recorded by the Investigating Officer, and also all other material collected by the Investigating Officer during the course of investigation. It appears that after investigation the charge-sheet has been filed by the Investigating Officer. It appears that the marriage of respondent no.2 i.e. informant was solemnized on 29th December, 1996, with applicant no.1 at Latur. Since then she started residing in the matrimonial home. It is stated in the FIR that from the said wedlock, respondent no.2 gave birth to one female child on 23rd September, 1998. There are no allegations of ill-treatment or harassment till that time. It is alleged that since respondent no.2 gave birth to female

child the members of the matrimonial home started giving ill-treatment to her; they also started giving harassment and ill-treatment on some trifling grounds. It appears that the informant came to Aurangabad on 1st February, 2000, and she got employment in Lokmanya Blood Bank, Adalat Road, Aurnagabad, and simultaneously she was prosecuting her studies. She started residing with her brother, namely Prakash Surwase in the rented premises. It is further alleged that during the said period applicant no.1 i.e. husband got addicted to liquor, and used to ask for money from her salary and demanded Rs.2 lacs for the purpose of construction of house at Latur. So far applicant nos.2 to 4 are concerned, they used to visit the house of her brother, and harassed her and used to make demand of Rs.2 lacs for the purpose of construction of house at Latur. They used to ill-treat mentally as well as physically and

also used to give fist blows to her. The said ill-treatment continued even after the death of mother of the informant i.e. on 30th January, 2010. She was not able to give money since she was serving on temporary basis in I.C.T.C. Department till 2008.

7. Upon careful perusal of the contents of the FIR, admittedly, there was no harassment or ill-treatment given by applicants till 23rd September, 1998. The period of alleged ill-treatment or harassment in the matrimonial home as stated in the FIR is with effect from 23rd September, 1998, till 1st February, 2000. Thereafter, the informant shifted to Aurangabad and started residing with her brother. The allegations that the applicants used to visit at Aurangabad, and visit the house of the brother and give harassment and ill-treatment and also give fist blows are inherently improbable inasmuch

as the distance between Latur and Aurangabad is more than 260 kilo meters. In the FIR, neither any specific incident or any date is mentioned. The allegations are omnibus. So far period from 23rd September, 1998, till 1st February, 2000 is concerned, there are no any specific allegations or incident quoted or any specific date is mentioned. Therefore, if the allegations in the FIR are taken at its face value, and read in its entirety, do not attract the ingredients of the alleged offences and consequently the alleged offence have not been disclosed. It would be travesty of justice to ask the applicants to face agony of trial by traveling the distance of more than 260 kilo meters on every date of trial in absence of any specific allegations with specific incident or date. The material collected by the Investigating Officer during the course of investigation is not sufficient to proceed with the trial as against

applicant nos.2 to 4. The conducting trial on the basis of such inadequate material would be exercise in futility and wastage of valuable time of the Court, which would amount to abuse of process of court.

8. 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 **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

1 (2012) 10 SCC 741

2 (2000) 3 SCC 693

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' days in chasing their 'cases' in different courts."

9. The Supreme Court in the case of

State of Haryana V/s Bhajan Lal³ wherein it is held that, in those categories of the case which are mentioned in para 108 of said judgment, the High 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

3 AIR 1992 SC 604

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. The case of applicant no.2 Vijaya w/o.Digamber Pawar, applicant no.3 Digamber s/o.Jivlag Pawar, and applicant no.4 Baby Saroja w/o. Angad Biradar is squarely covered under category nos.1 and 5 of the afore-stated categories from the judgment in the case of State of Haryana V/s Bhajan Lal [cited supra].

11. In the result, Criminal Application partly succeeds. So far applicant no.1 Rajendra Digamber Pawar i.e. husband of the informant, his application was already rejected as not pressed by order dated 16th December, 2016. Therefore, the trial Court can proceed against applicant no.1.

12. The application to the extent of applicant no.2 Vijaya w/o.Digamber Pawar, applicant no.3 Digamber s/o.Jivlag Pawar, and applicant no.4 Baby Saroja w/o. Angad Biradar is allowed in terms of prayer clause-B. Rule is made absolute on above terms. The application is partly allowed and the same stands disposed of.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE