

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL WRIT PETITION NO. 604 OF 2018**

- 1) Anjali Anish Damania,  
Age 49 years,
- 2) Anish Damania,  
Age 49 years,  
Resident At Fifth Floor,  
Vajayshree Durga, 6<sup>th</sup> Road,  
Santacruz (East)  
Mumbai 400 055.

...Petitioners

Versus

- 1) State of Maharashtra,  
Through its Chief Secretary  
Home Department,  
Centre No.1, WTC  
30<sup>th</sup> Floor, Cuff Parade,  
Mumbai 400 001.
- 2) Muktainagar Police Station  
Through its Sr. Police Inspector  
Near Tahasil Office,  
Muktainagar, Jalgaon – 425306.
- 3) Eknath Ganpatrao Khadse,  
Age 67 years, Occupation M.L.A.  
R/o Kothali Tq. Muktainagar  
Dist. Jalgaon.

...Respondents

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Mr. S. S. Jadhav, Advocate for petitioners.  
Mr. A. B. Girase, Public Prosecutor, for respondents No.1 and  
2/ State.  
Mr. V. J. Dixit, Senior Counsel i/b Mr. S. V. Dixit, Advocate for  
respondent No.3.

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**CORAM : T. V. NALAWADE &  
SMT.VIBHA KANKANWADI. JJ.**

**DATE : 28-08-2018.**

**ORAL JUDGMENT : ( Per Smt. Vibha Kankanwadi, J.)**

1. Present petition has been filed by the accused persons for invoking the powers of this Court under Article 226 of the Constitution of India and inherent powers of this Court under Section 482 of the Code of Criminal Procedure, for quashing and setting aside the First Information Report (hereinafter referred as "FIR" for the sake of brevity) lodged against them by respondent No.3 – informant.

2. The petitioners contend that, petitioner No.1 is an anti corruption activist. She has filed detailed Public Interest Litigation before this Court at Principal Seat and also appropriate proceedings before PMLA Court against corrupt politicians and elected members of the legislature. Cognizance of certain matters has been taken by this Court. Petitioner No.2 is the husband of petitioner No.1 who is a finance professional. He is not involved in any politics or activism. First Information Report vide Crime No. 68 of 2018 was registered with Muktainagar Police Station for the offence punishable under Section 451, 452, 146, 116, 120-B and 186 of Indian Penal Code against petitioners on the basis of the information lodged by

respondent No.3. Respondent No.3 had alleged in the said FIR that, petitioners had conspired and directed one Kalpana Inamdar to commit trespass into the office of respondent No.3 at Muktainagar and Mumbai in order to frame him under the provisions of Prevention of Corruption Act, for which complaint would have been filed. The petitioners contend that, bare perusal of the said FIR would reveal that, the basic ingredients of any of the offences have not been complied with.

3. The petitioners contend that, petitioner No.1 had come across various documents and land records which show that, respondent No.3 who was the elected official and the then Minister in the Government of Maharashtra had collected huge properties and assets, either in his name or that of his family member's name, beyond the legal known source of income. When petitioner No.1 insisted that, investigation should be made in respect of the said disproportionate assets, respondent No.3 sought protection by the political establishment despite there was irrefutable information and paper. Directions were sought by the petitioner No.1 in her Public Interest Litigation regarding investigation and this Court at Principal seat has directed the State Government to file a detailed reply. Thereafter, with malafide intention the respondent No.3 has filed cases for defamation against the petitioner No.1. Even derogatory language was used by the respondent No.3 in public as against the

petitioner No.1. She has also received threats from gangsters restraining her from pursuing the cases against the respondent No.3. Petitioners further contend that, Miss. Kalpana Inamdar worked as a liaison officer for Mr. Chagan Bhujbal against whom also the petitioner No.1 had filed Public Interest Litigation for disproportionate assets. Said Kalpana Inamdar had approached petitioner No.1 on 02-12-2014 and had offered her monetary consideration for the withdrawal of the case which was filed by the petitioner No.1 against Mr. Chagan Bhujbal. Immediately the petitioner No.1 had given a tweet. Thereafter also immediately the news channel had taken her reaction on the said tweet. Thereafter on 27<sup>th</sup> March, the petitioner No.1 and said Inamdar had heated debate on the news channel. Thereafter on 09<sup>th</sup> March, respondent No.3 was called for questioning by Anti Corruption Bureau, Nashik on disproportionate asset case filed by petitioner No.1. In the light of all these events Miss. Kalpana Inamdar, with malafied intention, came with a fabricated story that, petitioners had asked her to plant money in the office of respondent No.3 in Jalgaon as well as Mumbai. She had held the press conference on 27<sup>th</sup> March, and thereafter a legal notice was also sent to the petitioner No.1. Respondent No.3 on the basis of said press conference of Miss. Inamdar has lodged the said report. The basis for the said report is the concocted story. It can be gathered from the FIR that, any such

offence cannot be said to be made out. Since the FIR has been filed with malafied intention it deserves to be quashed and set aside. Hence, they have prayed for quashing and setting aside the FIR.

4. Heard learned advocate Mr. S. S. Jadhav for petitioners, learned Public Prosecutor Mr. A. B. Girase for respondents No.1 and 2 - State, learned Senior Counsel Mr. V. J. Dixit instructed by learned counsel Mr. S. V. Dixit for respondent No.3. Perused the relevant documents including the investigation papers.

5. It has been submitted on behalf of the petitioners that, petitioner No.1 has filed various Public Interest Litigations not only against the respondent No.3 but also against other politicians in which she has agitated that, these politicians have collected assets disproportionate to their income. As regards the respondent No.3 is concerned, he has lodged the report on 19-04-2018 i.e. Crime No. 68 of 2018, on the basis of alleged press conference held by Kalpana Inamdar on 11-04-2018. That means, the basis for his FIR was the hearsay information. The said FIR does not say as to when the alleged conspiracy and instigation was made. In fact said Inamdar had come to the house of petitioner No.1 on 02-12-2014 as she was then the liaison officer for Mr. Chagan Bhujbal, Ex-Minister. Immediately on the same day petitioner No.1 had given a tweet. Copy of the same has been produced at Exhibit 'F'. Thereafter there

was no occasion for Inamdar to respond to any call or even petitioner to call her. Further the information given by Senior Police Inspector, MIDC Police Station, Mumbai would show that, Kalpana Inamdar has criminal background. If any information is given in press conference by such a person, then whether it can be a matter on which offence can be registered. This is nothing but a political vendetta. He gave list of cases which have been filed against the petitioner No.1 and others only because she is fighting for the social cause. When ingredients of the offence have not been attracted, this would be the fit case where this Court should exercise its powers under Article 226 of the Constitution of India as well as Section 482 of the Code of Criminal Procedure.

6. The learned Public Prosecutor has submitted that, the investigation is still in progress, statement of Inamdar has been recorded by police as well as by Magistrate under Section 164 of the Code of Criminal Procedure. It was pointed out by her that, when she was called by petitioners at their residence, at that time it was disclosed that, papers of one Jagannath were tried to be handed over to Inamdar and she was tried to be convinced that she should enter the office of the respondent No.3 at Mumbai and Jalgaon. Investigation with said Jagannath is yet to be made, and therefore, at this stage FIR need not be quashed.

7. It has been submitted by learned Senior Counsel Mr. V. J. Dixit, representing respondent No.3 that, petitioner No.1 had purchased an agricultural land though she was not an agriculturist. This had happened in 2012. This fact was pointed out to the Government by respondent No.3, as a result of which, the said land was taken by Government. Since then petitioner No.1 is annoyed with respondent No.3. She is making baseless allegations against him, when he was minister, as well as thereafter. She has not produced a single document in support of her allegations. Whatever allegations she has made are with a view to defame respondent No.3. After Kalpana Inamdar had taken a press conference on 11-04-2018, it was revealed by respondent No.3 that, such incident had taken place at the instance of petitioners. Petitioners were instigating Inamdar by giving some documents and amount in order to put them on the table of the respondent No.3 either at Muktainagar or at Mumbai. Therefore, the said FIR came to be filed. When the investigation is still pending, case is not made out for quashing the FIR. In fact the petitioner No.1 is interfering in the investigation, she has made allegations against the investigating officer and on the basis of her allegations, the earlier investigating officer has been changed. If such kind of act is being done by the petitioners, she deserve no sympathy. He therefore, prayed for dismissal of the petition.

8. The contents of the FIR would show that, the basis for the lodging of FIR was the press conference that was allegedly held by Kalpana Inamdar at Mumbai on 11-04-2018. It is stated that, in the press conference a statement, orally as well as by way of press note was made by Kalpana Inamdar that, both the petitioners and six to seven more persons with them, had called her to the house of petitioner No.1. At that time both the petitioners told her that, they would give certain documents, filed to her and she should keep those files on the table in the office of respondent No.3 at Muktainagar and Mumbai as well as she should keep amount; immediately petitioner would bring persons from Anti Corruption Bureau, and thereby a trap would be led against respondent No.3. Further a statement was made that, it is the aim of petitioner No.1 that, respondent No.3 should be sent to jail. On the basis of this information, respondent No.3 has lodged the said FIR on 19-04-2018.

9. It is also stated in the FIR that, the petitioners have damaged or extinguished the evidence in the form of CCTV footage. A fact is certain that, in the alleged press note or statement by Kalpana Inamdar, she has not stated when she was allegedly called by petitioners at their house. Therefore, we have tried to consider her statement. It appears from the police record that, one statement which has no date but it is in computer print, not signed by police

official but signed by Kalpana Inamdar, was received by Police Inspector, Muktainagar Police Station on 29-05-2018. In the said statement it is stated that, she was given the complaint application filed by petitioner No.1 dated 03-05-2018 to I.G.P. Nashik Division to read. Thereafter she gave statement that, on 02-12-2014 she had gone at about 01.00 p.m. to petitioner No.1's house, at that time cousin brother of petitioner No.1 Krushkant Malap was present, petitioner No.1 asked help of Kalpana, there was informal talk regarding social activity. They had also discussion in respect of companies of Mr. Ajit Pawar and irrigation scam. Thereafter certain persons came who were known to Kalpana Inamdar. Earlier also there were three meetings between them in which it was discussed that, respondent No.3 is corrupt, and therefore, complaint should be lodged to the Anti Corruption Bureau, and he should be arrested and handed. Kalpana was asked to help. She being social activist and against the corruption, she had given a nod. However, at the time of forth meeting it was realized by her that, they are conspiring to defame respondent No.3, and therefore, she refused to be with them. At that time petitioner No.1 told her that, she should think again. She again refused and went back to house. Thus it is to be noted that, whatever she has stated in that statement, was regarding event that had taken place on 02-12-2014. Thereafter, it appears that, one more statement of Kalpana Inamdar has been

taken on 01-06-2018 wherein she has improved the story.

10. A bit of confusion has been tried to be made as to whether that incident i.e. offence of conspiracy was held on 23<sup>rd</sup> March 2018 or 02<sup>nd</sup> December 2014. However, her statement before learned Magistrate under Section 164 (5) of Code of Criminal Procedure would clearly show that, the alleged incident had taken place on 02-12-2014. The basic question that arises is, if incident had taken place on 02-12-2014, why Miss. Kalpana Inamdar should arrange a press conference on 11-04-2018 i.e. after almost four years. Second point that is required to be considered is, when the FIR was lodged on 19-04-2018, why there was no attempt on the part of the investigating machinery to take the statement of Kalpana Inamdar at the earliest. Whatever statement which has been inwards on 29-05-2018 is not signed by a police officer. The first regular or official statement of Inamdar under Section 161 of Code of Criminal Procedure appears to have been taken on 01-06-2018. Her statement under Section 164 (5) of Code of Criminal Procedure has been taken by the learned Magistrate on 01-06-2018 itself. This appears to be nothing but a political vendetta and as a result of the litigation in the form of Public Interest Litigation filed by petitioner No.1. The petitioner No.1 has given that, she has filed Public Interest Litigations and it is mentioned that cognizance of them have been taken by this Court at Principal Seat. We have scrutinized the

material collected by investigating agency, because of the nature of FIR. At the cost of repetition it can be said that, FIR is based on information given by Ms. Inamdar.

11. It is also to be noted that, now in all 20 offences appear to have been lodged against the petitioner No.1. Most of them are from the same political party persons and that too in respect of defamation. When a social activist want to agitate certain alleged misdeeds by adopting legal procedure, then if such social activist's work is hampered in such a way, then it cannot be said to be a good sign in a democracy. One of the task which social activist undertake, is to point out wrong doings by the Government, Government officials or the persons who run the Government. Pointing faults, taking action against erring officials as well as political persons, can be said to be a part of act undertaken by social activist. It would be otherwise difficult for the social activist to point out illegalities or errors in the system. Definitely the FIR in this case was based upon hearsay information. Even in her statement inwards on 30-05-2018, said Kalpana Inamdar has clearly stated that, she has no evidence regarding those discussions with her, and therefore, she has not clarified it at any time. When the person on whom respondent No.3 wanted to rely had no evidence with her, it would be a futile exercise to keep such FIR pending.

12. Another fact is also required to be noted that, whatever was allegedly told by petitioners in the form of instigation to Kalpana Inamdar was very vague. She has not clarified that, whose papers were tried to be given to her, she has not stated that she had made any enquiry as to whose papers petitioners would be giving to her, how much amount would be handed over to her. In her statement under Section 164 (5) of Cr.P.C., she stated that, petitioner No.1 told her that, those papers were in respect of one Jagannath and respondent No.3 has asked him amount of Rs.4 to 5 Crores. In this statement she says that, petitioner No.1 had challenged her by keeping that amount on the table of respondent No.3. A giving challenge is different from instigation. If these three statements are considered, it can be seen that, at each point of time this lady has improved her own version. Only first name of that Jagannath is disclosed and now till the date of the hearing, the investigating officer is in dark as to how he would trace out said Jagannath. His statement has not been yet taken. Therefore, the story is as vague as possible.

13. Under such circumstance the case is definitely covered under the following parameters laid down in, *State of Haryana and Others Versus Bhajan Lal and Others.*, [1992 Supplement- 1 Supreme Court Cases, 335], wherein it is held that :

*"The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 CrPC can be exercised by the High Court 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 formulate 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 FIR 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 FIR 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 even 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."*

14. Therefore, applying the above said principle we find this is a fit case where First Information Report against the applicants, deserves to be quashed and set aside by allowing the

writ petition. Hence, following order.

**ORDER**

- 1) Writ Petition is allowed.
- 2) Relief is granted in terms of prayer Clause 'A'.
- 3) Rule made absolute in above terms.
- 4) Remaining two matters will be heard on 05-09-2018 in urgent category.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

**(T. V. NALAWADE)**  
**JUDGE**

*vjg/-.*