

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

CRIMINAL APPLICATION NO. 3832 OF 2017

1. Sayyed Liyaqat Sayyed Samad,
Age 47 years, Occu. Driver,
R/o Sakali, Taluka Yawal,
District Jalgaon
2. Sk. Azharuddin Rauffuddin,
Age 32 years, Occu. Business,
R/o Sakali, Taluka Yawal,
District Jalgaon
3. Sk. Niyazuddin Sk. Shafiuddin,
Age 53 years, Occu. Business
R/o Sakali, Taluka Yawal,
District Jalgaon
4. Sk. Muzammil Sk. Niyazuddin
Age 18 years, Occu. Student
R/o Sakali, Taluka Yawal,
District Jalgaon
5. Sayyed Shaukat Sayyed Taher,
Age 61 years, Occu. Business
R/o Sakali, Taluka Yawal,
District Jalgaon
6. Mahemood Ali Taher Ali,
Age 29 years, Occu. Business
R/o Sakali, Taluka Yawal,
District Jalgaon
7. Sayyed Ashfak Sayyed Shaukat,
Age 25 years, Occu. Business,
R/o Sakali, Taluka Yawal,
District Jalgaon
8. Sk. Anwarul Haq Sk. Raufuddin,
Age 39 years, Occu. Business
R/o Sakali, Taluka Yawal,
District Jalgaon
9. Shabuddin Raufuddin Shaikh,
Age 30 years, Occu. Business
R/o Sakali, Taluka Yawal,
District Jalgaon
10. Sk. Raufuddin Sk. Shafiuddin,
Age 63 years, Occu. Business
R/o Sakali, Taluka Yawal,
District Jalgaon

11. Sayyed Sadiq Sayyed Samad,
Age 43 years, Occu. Driver
R/o Sakali, Taluka Yawal,
District Jalgaon
12. Sayyed Tayyeb Sayyed Taher,
Age 47 years, Occu. Agri.,
R/o Sakali, Taluka Yawal,
District Jalgaon
13. Sayyed Azad Sayyed Tayyeb,
Age 20 years, Occu. Student,
R/o Sakali, Taluka Yawal,
District Jalgaon
14. Sayyed Shehzad Sayyed Tayyeb,
Age 19 years, Occu. Student
R/o Sakali, Taluka Yawal,
District Jalgaon
15. Sayyed Sadiq Sayyed Aziz,
Age 47 years, Occu. Labour
R/o Sakali, Taluka Yawal,
District Jalgaon
16. Sayyed Iqbal Sayyed Aziz,
Age 45 years, Occu. Labour
R/o Sakali, Taluka Yawal,
District Jalgaon
17. Sayyed Shaharukh Sayyed Yunus,
Age 25 years, Occu. Labour
R/o Sakali, Taluka Yawal,
District Jalgaon
18. Saber Sayyed Munsaf,
Age 36 years, Occu. Labour,
R/o Sakali, Taluka Yawal,
District Jalgaon
19. Sayyed Riyaz Sayyed Sahebali,
Age 25 years, Occu. Labour
R/o Sakali, Taluka Yawal,
District Jalgaon
20. Sayyed Alim Sayyed Salim
Age 34 years, Occu. Labour
R/o Sakali, Taluka Yawal,
District Jalgaon
21. Sayyed Noor Sayyed Bismilla,
Age 45 years, Occu. Labour
R/o Chinawal, Taluka Yawal,
District Jalgaon

22. Sayyed Irfan Sayyed Raheman
Age 47 years, Occu. Labour
R/o Surat, Gujarat
23. Sayyed Shakin Sayyed Qurban,
Age 40 years, Occu. Labour
R/o Sakali, Taluka Yawal,
District Jalgaon
24. Sayyed Farhan Sayyed Irfan,
Age 24 years, Occu. Labour
R/o Sakali, Taluka Yawal,
District Jalgaon
25. Sayyed Azgar Sayyed Bismilla,
Age 35 years, Occu. Driver
R/o Sakali, Taluka Yawal,
District Jalgaon
26. Sayyed Arman Sayyed Razzaq,
Age 47 years, Occu. Labour
R/o Sakali, Taluka Yawal,
District Jalgaon
27. Sayyed Altaf Sayyed Arman
Age 18 years, Occu. Labour
R/o Sakali, Taluka Yawal,
District Jalgaon
28. Sayyed Mohsin Sayyed Bismilla,
Age 38 years, Occu. Labour
R/o Sakali, Taluka Yawal,
District Jalgaon
29. Sayyed Saddam Sayyed Bismillah,
Age 28 years, Occu. Labour
R/o Sakali, Taluka Yawal,
District Jalgaon

..Applicants

Versus

1. The State of Maharashtra
2. The Police Station In charge,
Yawal Police Station,
Taluka Yawal, Dist. Jalgaon
3. Yousufkhan Noorkhan,
Age 55 years, occu.Business
and Agriculture,
R/o Sakali, Taluka Yawal,
District Jalgaon

..Respondents

Mr Amol D. Kakade, Advocate for applicants
Mrs P.V. Diggikar, A.P.P. for respondents no.1 and 2
Mr M.S. Kulkarni, Advocate for respondent no.3

**CORAM : S.S. SHINDE AND
A.M. DHAVALA, JJ**

**DATE OF RESERVING
THE JUDGMENT : 15.12.2017**

**DATE OF PRONOUNCING
THE JUDGMENT : 05.02.2018**

JUDGMENT (Per A.M. Dhavale, J.)

1. Twenty nine applicants seek quashing of F.I.R. lodged by respondent no.3 Yousufkhan Noorkhan on 1.6.2017 against them on the basis of which crime at C.R.No.65/2017 is registered at Yawal Police Station for offences punishable under Sections 436, 143, 504, 506 of the Indian Penal Code.

2. Brief facts for deciding this application may be stated as follows:

The applicants are accused belonging to one party and residing at Sakali, Taluka Yawal, District Jalgaon. As per the F.I.R., the informant Yusufkhan (respondent no.3) was agriculturist residing in the same village and is also having plastic factory, which is looked after by him and his son Mohd. Faizankhan. On 13.1.2016 (almost one year earlier) at 9.00 p.m., while he was at his residence at Yawal, Syed Liyaqat, applicant no.1 and his accomplice had thrown stones at his house, assaulted him and his relatives, abused them and threatened to kill them. He had lodged F.I.R. dated 15.6.2016 about the said assault. That time, he and his family members were also prosecuted for attempt to commit murder and rioting. He and his

family members had gone to hospital for taking treatment. On 14.6.2016, taking advantage of absence of him and his family members from the village, somebody set his factory on fire and caused loss to the tune of Rs.25 lakhs. His son Abu Sufiyan had reported the matter to the police on 15.6.2016, as abrupt firing. He and his family members were arrested and were released in the month of November on bail. That time, several persons told him that on account of the earlier incident or rioting and attempt to commit murder, the applicants herein had set on fire his plastic factory. Applicants no.1 to 3 were carrying cans containing combustible material and they were instigating others and other accused set the factory on fire.

3. The applicants claim quashing of the F.I.R. on following grounds:

(I) On 13.6.2016, the applicants were assaulted by respondent no.3 and members of his party and they attempted to commit murder and committed rioting and other offences and crime at C.R.No.67/2016 was registered against respondent no.3 and others.

(II) Respondent no.2's son has lodged report of accidental fire on 15.6.2016.

(III) There is inordinate delay of almost one year in lodging the F.I.R.

4. Attempt is made to rely upon some observations in the orders for granting bail, which are not relevant for deciding this application.

5. Respondent no.3 has filed affidavit-in-reply dated 6.11.2017. He opposed the application and claimed that there was attempt to lodge F.I.R., but the police were not recording the F.I.R. and therefore, there was delay. Respondent no.3 had approached the Superintendent of Police, Jalgaon and thereafter to this Court by way of filing Criminal Writ Petition No. 625 of 2017 and after issuance of notices, the F.I.R. was recorded. This material fact has been suppressed.

6. In respect of incident dated 14.6.2017, respondent no.3's son had lodged report registered at C.R.No.68 of 2016 against the applicants and their presence on the spot cannot be disputed.

7. The respondents are in minority in the village, whereas the applicants are in majority. Respondent no.3 and his family members, due to fear were constrained to take shelter elsewhere. Even police bandobast was required to be deployed for maintaining law and order. The police were hand in gloves with the applicants. The respondent no.3 had approached the Superintendent of Police on 4.3.2017 and this Court has passed orders on 28.5.2017 and 6.6.2017.

8. The applicants have filed additional affidavit dated 20.11.2017. Learned A.P.P. has produced the papers of investigation and has opposed the application.

9. We have carefully heard the learned Advocate for the applicants and learned A.P.P. for the State and learned Advocate for respondent no.3 and gone through the papers of investigation and documents on record.

10. The first incident took place on 13.6.2016 at 21.00 hours. Applicant no.1 Sayyed Liyaqat alias Raju Sayyed has filed F.I.R. at C.R.No.67/2016 in which respondent no.3 is shown as accused no.1. There are serious allegations showing that he was leader of the team, which indulged in assaulting. The F.I.R. shows that there was some dispute over collection of water from tube well and thereafter respondent no.3 Yusufkhan slapped the informant - applicant no.1. Accused no.3 Wasimkhan gave a blow of bat on chest of his son Syed Abu Sufiyan. There was assault by others with hockey stick, bat on skull and attempted to commit murder of Syed Daud. The papers show that members of applicant no.1's party have sustained grievous injuries and were hospitalised. In respect of the same incident, on the next day, Abu Sufiyan and Yusufkhan from the party of respondent no.3 lodged F.I.R. registered at C.R.No.68/2016 in which some of the present applicants were shown as accused. There were allegations about commission of offences under Sections 147, 148, 324, 323, 504 and 506 of Indian Penal Code. This incident took place at 9.00 p.m.

11. The incident of setting the factory on fire took place on next day i.e. on 14.6.2016 at 23.30 hours.

12. In respect of this, as per impugned F.I.R. itself report was lodged by son of respondent no.3 by name Abu Sufiyan at Yawal police station on 15.6.2016. As per the said report, it was against unknown person. It is obvious that respondent no.3's son or his closed relatives or neighbours had not seen who had set the factory on fire, otherwise their names would have been disclosed in the said report. Thereafter,

the accused persons were arrested and were with police for a long time. Even during that period, no F.I.R. was lodged against the applicants or no statements were given disclosing the names of the applicants. There is extreme delay in lodging the F.I.R. It is true that respondent no.3 had earlier approached the Superintendent of Police, but according to respondent no.3, it was also quite late. The specific date has not been given nor the copy of the said application at annexure 'R-2' discloses the date but Criminal Writ Petition no. 625 of 2017 was filed in the month of April 2017 and it shows that the report was submitted to the Superintendent of Police on 4.3.2017. It is about nine months after the incident. Considering the relations between the parties if anybody had seen the incident of setting the plastic factory of respondent no.3 on fire, there would have been immediate reporting of the same to respondent no.3 or his neighbours and friends and there would have been immediate F.I.R. Delay of more than nine months in approaching the Superintendent of Police and delay of one year in lodging the F.I.R. cannot be explained on any hypothesis than that it must be a false F.I.R. Considering the previous incident between the parties, injured condition of some of the accused persons and considering the fact that son of respondent no.3 had lodged a report of accidental fire, it is apparent that the F.I.R. dated 14.6.2017 is after thought and not appealable to the conscious. In this case, there is extreme delay in recording the statements of the witnesses.

13. Besides, if Abu Sufiyan had filed a report of setting the plastic factory on fire by unknown persons, it would be a F.I.R. and the present F.I.R. would be second F.I.R. It is well settled that second F.I.R. is not permissible. If some statements are recorded in respect of the

incident disclosed in the first F.I.R., there cannot be second F.I.R., but statements can be recorded in the same.

14. In this case, no other material except statements of witnesses has been brought on record to show the complicity of the applicants in the crime. We find that in prosecution on the basis of such F.I.R., chances of conviction are bleak. We find that this F.I.R. is filed as a counter blast to the crime registered by applicant no.1 against respondent no.3 and others. The story in the said F.I.R. is totally untrustworthy and appears to be concocted. Allowing the prosecution on the basis of such F.I.R. will be abuse of the process of Court. Story is inherently improbable. We rely on "*State of Haryana V/s Bhajanlal*" AIR 1992 SC 604 in which it is *inter alia* held :

“ In the exercise of the extra-ordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code of Criminal Procedure, the following categories of cases are given 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 guide- kinds of cases wherein such power should be exercised:

(a) 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;

(b) 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;

(e) 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;

(g) 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. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence on and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself.

In **Amit Kapoor Vs. Ramesh Chander, (2012) 8 SCC 460**, it

is held :

“27.4 Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court

should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.15 Coupled with any or all of the above, where the Courts finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.”

15. In our opinion, this is a fit case for quashing of the F.I.R. Hence, we pass the following order:

- ORDER -

- (I) Criminal Application is allowed.
- (II) The F.I.R. registered at Yawal police station at C.R.No.65/2017 dated 1.6.2017 against the applicants under Sections 436, 143, 504, 506 of Indian Penal Code is hereby quashed and set aside.
- (III) Rule is made absolute in above terms.

(A.M. DHAVAL, J.)

(S.S. SHINDE, J.)

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