

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1465 OF 2016

Firoz Abdul Majid Hawaldar : Applicant.
Versus
State of Maharashtra and anr. : Respondents.

**ALONG WITH
CRIMINAL APPLICATION NO.1466 OF 2016**

Firoz Abdul Majid Hawaldar and anr. : Applicants.
Versus
State of Maharashtra and anr. : Respondents.

**ALONG WITH
CRIMINAL APPLICATION NO.589 OF 2017**

Azizabi Abdul Majid Hawaldar and ors. : Applicants.
Versus
The State of Maharashtra and anr. : Respondents.

Mr. Manoj Prajapati i/by Mohit Gadkari & Co. for the Applicants in Criminal Application Nos.1465 of 2016 and 1466 of 2016.
Mr. Shreepad Murthy a/w Mr. Abhishek Patil for the Applicants in Criminal Application No.589 of 2017 and for the Respondent No.2 in Criminal Application Nos. 1465 of 2016 and 1466 of 2016.
Mr. K V Saste, Addl. PP for the Respondent/State in all Criminal Applications.

**CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.**
DATE : 26th JULY 2018

P.C.

1 The above Criminal Application Nos.1465 of 2016 and 1466 of 2016 have been filed for quashing of the FIR being C.R. No.398 of 2016 registered with the MIDC Police Station, Andheri, Mumbai for the offences

punishable under Sections 323, 452, 504, 506(I) r/w 34 of the Indian Penal Code (subject matter of the Criminal Application No.1465 of 2016) and the FIR being C.R. No.405 of 2016 registered with the MIDC Police Station, Andheri, Mumbai for the offences punishable under Sections 354, 509 r/w 34 of the Indian Penal Code (subject matter of the Criminal Application No.1466 of 2016) respectively. In so far as Criminal Application No.589 of 2017 is concerned, the same has been filed for quashing of the proceedings being Special Case Child Protection No.228 of 2017 arising out of FIR No.435 of 2016 pending before the Sessions Court, Dindoshi, Mumbai.

2 The parties are closely related except that the relationship of the first informant in so far as the first FIR being No.398 of 2016 is concerned i.e. Shahjahan Abdul Majid Hawaldar is sought to be questioned by the learned counsel appearing on behalf of the Applicants in Writ Petition Nos. 1465 of 2016 and 1466 of 2016. The undercurrent to the filing of the FIRs is the dispute in respect of a immovable property i.e. the commercial premises wherein the business in the name of M/s. Zentek Electronics and Communications was being carried out by the brothers who were partners and who are arrayed as either the Applicants/accused or the Respondent No.2/first informant in the above proceedings.

3 As indicated above, in so far as the proceedings being Special Case

Child Protection No.228 of 2017 arising out of FIR No.435 of 2016 are concerned, the same also involve the provisions of POCSO Act as the allegation is in respect of the alleged molestation of the daughter of one Firoz who is the brother in law of the first informant Sayma Hussain Hawaldar in C.R. No.435 of 2016.

4 The learned counsel appearing on behalf of the parties sought to make submissions questioning the registration of the FIRs in question as according to the learned counsel the ingredients of the offences alleged against each of the Applicants are conspicuously absent. Towards that end the learned counsel sought to draw our attention to various factual aspects.

5 In our view, it is not possible for us in our jurisdiction under Section 482 of the Criminal Procedure Code to dvelve into the material on record and arrive at a conclusion one way or the other in the above Criminal Applications. We, therefore, do not deem the above Criminal Applications to be fit cases wherein we should exercise our jurisdiction under Section 482 of the Criminal Procedure Code for quashing of the FIRs in question at this stage. We accordingly dismiss the above Criminal Applications.

6 However, it would be open for the parties to invoke the statutory remedy under the Criminal Procedure Code before the Trial Court. If any such

statutory remedy is invoked, needless to state that, the Trial Court would hear and decide the said proceeding on its own merits and in accordance with law.

7 In so far as the Criminal Application Nos.1465 of 2016 and 1466 of 2016 are concerned, the ad-interim order stands vacated as a consequence the Investigating Agency would be free to file the charge sheets. In case any application for exemption is filed on behalf of the mother Azizabi, the same would be considered appropriately by the concerned Court looking to her age.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]

**Laxmikant
Gopal
Chandan**

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Gopal Chandan
Date: 2018.07.27
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