

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.259 OF 2018

- 1) Chandrashekhar s/o Gangaram Kalwale,
Age-34 years, Occu:Service police
constable (P.S.) Purna,
R/o-House No.4833, Siddharthnagar,
Purna, Tq-Purna, Dist-Parbhani,
- 2) Gangaram s/o Daulatrao Kalwale,
Age-67 years, Occu:Retired Assistant
Teacher, R/o-House No.4833,
Siddharthnagar, Purna,
Tq-Purna, Dist-Parbhani,
- 3) Sayabai Gangaram Kalwale,
Age-60 years, Occu:Housewife,
R/o-House No.4833, Siddharthnagar,
Purna, Tq-Purna, Dist-Parbhani,
- 4) Balaji s/o Gangaram Kalwale,
Age-37 years, Occu:Audiologist,
R/o-Gandhinagar, Nanded,
Tq. & Dist-Nanded.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through: Police Station
Bhagyanagar, Nanded,
Tq. & Dist-Nanded,

2) Anuja w/o Jayprakash Kalwale,
Age-36 years, Occu:Housewife,
R/o-Pawannagar Malegaon Road,
Taroda (Kh), at present:
C/o-B.D. Paattewale, Shivraya nagar
(Khandguru), Taroda(Kh),
Nanded, Tq. & Dist-Nanded.

...RESPONDENTS

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Mr.G.G. Suryawanshi Advocate for Applicants.
Mr.S.B. Narwade, A.P.P. for Respondent No.1.
Mr.S.P. Joshi Advocate for Respondent No.2.

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**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

DATE : 27TH FEBRUARY, 2019

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Application has been filed praying therein to quash and set aside the First Information Report No. 394 of 2017 dated 25th December, 2017, registered with Bhagyanagar Police

Station, Nanded, Dist-Nanded for the offence punishable under Section 498-A, 323, 504 and 4 of the Indian Penal Code, to the extent of present Applicants.

3. Learned counsel appearing for the Applicants submits that even if the allegations in the First Information Report (for short "F.I.R.") are taken at its face value and read in its entirety, alleged offences are not disclosed against the Applicants. It is further submitted that all the allegations are omnibus in nature and no specific date, time or overt act is attributed qua each of the Applicants. It is submitted that Applicant No.2 is father-in-law and Applicant No.3 is mother-in-law of Respondent No.2/informant, and Applicant Nos.1 and 4 are brother-in-laws of Respondent No.2. It is further submitted that all the Applicants are residing separately. Learned counsel submits that since 2007, the informant

along with her husband and a son, were residing at Akurdi Station, Pune, and all the Applicants are residing at Purna, Dist-Parbhani. Relying upon the averments in the Application, grounds taken therein and the annexures thereto, learned counsel appearing for the Applicants submits that the Application may be allowed.

4. On the other hand, learned A.P.P. appearing for the State, relying upon the allegations in the F.I.R. and also statements of the witnesses and other material collected during the course of the investigation, submits that the alleged offences have been disclosed, which needs investigation and therefore, the Application deserves to be rejected.

5. Learned counsel appearing for Respondent No.2 submits that, an allegations in the F.I.R. will have to be read as it is, and on disclosure

of the alleged offences, it should be left to the investigating officer to investigate into the said allegations. It is submitted that during the course of investigation, material is surfaced on record which would make it clear that the allegations made in the F.I.R. gets support from the said material collected during the course of the investigation. It is submitted that if the allegations in the F.I.R. are read in its entirety, alleged offences qua each of the Applicants have been disclosed. Learned counsel invites our attention to the affidavit in reply filed on behalf of Respondent No.2 and submits that the Application may be rejected.

6. We have given careful consideration to the submissions of learned counsel appearing for the Applicants, learned A.P.P. appearing for the State and learned counsel appearing for Respondent No.2. With their able assistance, we have perused

the averments in the Application, annexures thereto, reply filed by Respondent No.2 and the investigation papers made available for our perusal by learned A.P.P.

7. Upon careful perusal of the contents of the First Information Report, there are general allegations that all the accused demanded Rs.2,00,000/- from the parents of the informant/ Respondent No.2, for purchase of plot at Pune. It is alleged that on account of said demand, there was ill-treatment to the informant at the hands of the Applicants and other accused. It appears that though there are some specific allegations against the husband of the informant, but he is not applicant in the present Application. We find considerable force in the argument advanced by learned counsel appearing for the Applicants that Applicant No.2 is father-in-law of the informant, Applicant No.3 is mother-in-law of the informant

and Applicant Nos.1 and 4 are brother-in-laws of the informant, and all the Applicants are residing separately. Since the year 2007, the informant along with her husband and a son, were residing at Pune and the present Applicants are residing at Purna, Dist-Parbhani. So far as the present Applicants are concerned, there are no specific allegations quoting specific instances of their involvement and therefore, further continuation of proceedings on the basis of First Information No.394 of 2017 registered on 25th December, 2017, with Police Station Nanded for the offence punishable under Section 498-A, 323, 504 read with 34 of the Indian Penal Code as against the Applicants will tantamount to abuse of process of law.

8. The Supreme Court in the case of Geeta Mehrotra and another vs. State of Uttar Pradesh and another¹ in the facts of that case, held that

1 (2012) 10 SCC 741

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. Prasad² wherein in para 12 it is observed thus:

"12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred 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

2 (2000) 3 SCC 693

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. For the reasons afore-stated, the Criminal Application is allowed in terms of Prayer Clause "B]", to the extent of present Applicants.

10. Rule made absolute on above terms. Criminal Application stands disposed of, accordingly.

11. Needless to observe that, the concerned Investigating Officer can proceed against accused Jayprakash Gangaram Kalwale, who is husband of Respondent No.2.

[R.G. AVACHAT, J.]

[S.S. SHINDE, J.]