

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1252 OF 2019

- [1] Shaikh Shabana @ **APPLICANTS**
Shaikh Farjana W/o Shaikh Chand
Age: 55 years, Occu:- Household,
R/o Mouje Warni, Tq. Shirur Kasar,
Dist. Beed
- [2] Shaikh Nabi S/o Shaikh Lal
Age: 65 years, Occu:- Agriculturist,
R/o Mouje Warni, Tq. Shirur Kasar,
Dist. Beed
- [3] Shaikh Hasan S/o Shaikh Lal
Age: 55 years, Occu:- Agriculturist,
R/o Mouje Warni, Tq. Shirur Kasar,
Dist. Beed
- [4] Shaikh Hussain S/o Shaikh Nabi
Age: 45 years, Occu:- Agriculturist,
R/o Room No.1, RPF Chawl, Sanjay Nagar,
Thane
- [5] Shaikh Abdul S/o Shaikh Lal
Age: 60 years, Occu:- Agriculturist,
R/o Mouje Warni, Tq. Shirur Kasar,
Dist. Beed
- [6] Gulnaz W/o Lukman Pathan
Age: 35 years, Occu:- Household,
R/o Balepir, Beed, Tq. & Dist. Beed
- [7] Shaikh Ahmed S/o Julekha Pathan
Age: 50 years, Occu:- Agriculturist,
R/o Karegaon, Tq. Patoda,
Dist. Beed

V E R S U S

- [1] The State of Maharashtra **RESPONDENTS**
- [2] Shaikh Tahesim W/o Shaikh Mujib
Age: 22 years, Occu:- Household,
R/o Tayyab Nagar, Georai,
Tq. Georai, Dist. Beed

Mr. H.V. Tungar, Advocate for the applicants
Mrs. V.N. Patil/Jadhav, APP for respondent No.1/State
Mr. Y.S. Choudhary, Advocate for respondent No.2

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**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATE : 9th December, 2019

ORAL JUDGMENT [PER : M.G. SEWLIKAR, J.] :

Rule. Rule made returnable forthwith. With consent of learned counsel for both the sides, heard finally.

2. By this application under Section 482 of Criminal Procedure Code, the applicants, who are relatives of husband of respondent No.2/informant, have prayed, *inter alia*, for quashing the charge-sheet filed on the strength of First Information Report. The Charge-Sheet i.e. Regular Criminal Case No.95 of 2019 is pending before the Judicial Magistrate [First Class], Georai, District Beed for the offences punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code.

3. Facts giving rise to this application are that the respondent No.2-Shaikh Tahesim was married to Sk. Mujib Sk. Chand on 12th March, 2013 according to Muslim rites. She was maintained for a period of three

years by the applicants. Applicant No.1 is the mother of Sk. Mujib Sk. Chand. Applicant Nos. 2 and 3 are the uncles of Sk. Mujib Sk. Chand, applicant No.4 is the son of applicant No.2. Applicant No.5 is the uncle of Sk. Mujib Sk. Chand. Applicant No.6 is the married sister of Sk. Mujib Sk. Chand and applicant No.7 is the brother of applicant No.1 i.e. maternal uncle of Sk. Mujib Sk. Chand.

4. It is alleged in the First Information Report that after the marriage, the informant was maintained well for a period of three years. Out of the wedlock, she delivered a son by name Sk. Tahir Sk. Mujib. The husband of respondent No.2 i.e. Sk.Mujib and other applicants used to demand Rs.2,00,000/- for purchasing a riksha which is to be brought from her parents and used to harass her physically and mentally. Upon failure to meet the said demand, Sk. Mujib Sk. Chand used to beat her and under influence of alcohol used to confine her for days together. Once, during the night time, the husband of respondent No.2 Sk. Mujib tried to kill her by smothering with a pillow. Accused Sk. Mujib took the son away from her when she was at her matrimonial home and threatened the complainant to kill their son, if demand of Rs.2,00,000/- for purchasing auto-ricksha was not fulfilled.The grandfather of the informant/respondent No.2 gave ricksha to her husband. Thereafter, her husband and other

applicants started demanding Rs.1,00,000/- for development of land. About a year ago, the informant was beaten by the accused Sk. Mujib and was driven out of the house and since then respondent No.2 is staying with her parents. About fifteen days before lodging of the First Information Report, all the applicants and Sk. Mujib had been to the house of respondent No.2's father and beat the respondent No.2. On these allegations, First Information Report was lodged on 8th January, 2019.

5. During the pendency of this application, charge-sheet was filed and amendment was allowed to be carried out for the quashment of the charge-sheet.

6. It is the case of applicants that applicant No.1 is residing at Mouje Warni, Taluka Shirur Kasar, applicant Nos.2, 3 and 5 are the uncles of Sk. Mujib and they all are residing at Mouje Warni but in separate houses. Applicant No.4 is the son of applicant No.2 and is residing at Mumbai since last more than fifteen years and is doing business. Applicant No.6 is married sister-in-law of applicant No.2. She got married about 20 years back and is residing at Beed since then. Applicant No.7 is the maternal uncle of Sk. Mujib and is residing at Mouje Karegaon, Taluka Patoda, District Beed and is doing business of selling and purchasing goats seasonally.

It is alleged that all the allegations are made against the husband only. The allegations against the applicants are general in nature, and therefore, the charge-sheet needs to be quashed and set aside against the applicants.

7. Heard learned counsel Mr. H.V. Tungar for the applicants, learned A.P.P. Mrs. V.N. Patil/Jadhav for respondent No.1-State and learned counsel Mr. Y.S. Choudhary for respondent No.2.

During the course of the arguments, Shri Tungar, learned counsel for the petitioners sought permission to withdraw the petition in respect of petitioner Nos.1, 2, 3 and 5.

8. The law regarding quashment of First Information Report/charge-sheet is well settled in view of the decision in the case of ***State of Haryana and others vs. Bhajan Lal and others*** [AIR 1992 SC 604]. It has been held in paragraph No.108 of this case as under :-

“1. Where the allegations made in the First Information Report of 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."

9. Thus, while quashing of First Information Report, it has to be seen whether allegations made in the First Information Report even if accepted at their face value, *prima facie* constitute any offence or whether on the basis of the uncontraverted allegations, any offence is made out.

10. The width and contours of the power of the High Court under Section 482 of the Cr.P.C. has been expounded by a three-Judge Bench of the Supreme Court in the case of ***State of Karnataka Vs. L. Muniswamy*** **MANU/SC/0143/1977 : (1977) 2 SCC 699** as under :

"7.In the, exercise of this, whole some power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding

ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

11. On the anvil of this legal position, it will have to be seen, whether on the basis of uncontroverted allegations in the First Information Report any cognizable offence is made out against the applicants. On perusal of the First Information Report, it is evident that the allegations are made against the husband Sk. Mujib only. So far as applicant Nos.4, 6 and 7 are concerned, the allegations are general in nature. No specific act is attributed against any of the petitioner Nos. 4, 6 and 7. Applicants have produced on record the Ration-Card of applicant No.4 Shaikh Hussain indicating therein that he is staying at Sanjaynagar, Mumbai. It clearly shows that applicant No.4 does not reside at the place

of the husband Sk. Mujib. Applicant No.6-Gulnaz is the married sister and Adhar-Card shows that she is residing at Belkhandi (Pa), Dongar Patoda, District Beed. Applicant No.7 Sk. Ahmed, as per Adhar-Card is shown to be a resident of Karegaon, District Beed. In the charge-sheet also, the same address of applicant No.7 is shown. This clearly shows that respondent Nos.4, 6 and 7 are not residents of village Warni, Taluka Shirur Kasar, District Beed.

12. It is judicially recognized that in the wake of marital discord, the allegations are made thick and fast. There is tendency to rope in as many persons from family of the husband as possible, irrespective of their involvement in the alleged crime. Allowing the prosecution of immediate relatives of the husband of respondent No.2/complainant are involved in this case, when the prosecution case does not indicate their involvement, would amount to grave injustice. In exercise of powers under Section 482 of Cr.P.C., it would be justified to quash a proceeding if it's continuation amounts to abuse of process of the Court.

13. In the case of ***Priti Gupta vs. State of Jharkhand (2010) 7 SCC 667***, it has been held that the tendency of implicating husband and all his immediate relatives, is also not uncommon. The allegations of harassment by the husband's close relations knows

relatives who had been living in different cities and never visited or rarely visited the place where the complainant resides, would have an entirely different complexion. In the case at hand also, the applicants have brought on record that they are not living at the matrimonial place of respondent No.2, even then they have been roped in. The allegations against them are general in nature. Even if these allegations are accepted at their face value, no offence under Section 498-A of Indian Penal Code would be made out. Therefore, continuation of prosecution would amount to abuse of process of the Court. Therefore, we deem it fit to quash the proceeding in Regular Criminal Case No.95 of 2019, pending before the Judicial Magistrate (First Class) Georai, District Beed to the extent of applicant Nos.4, 6 and 7. The application is withdrawn to the extent of applicant Nos.1, 2, 3 and 5. In view of this, following order is passed :

O R D E R

[a] Application in respect of applicant Nos.4, 6 and 7 is allowed in terms of prayer clause "**B**" and "**B1**".

[b] Application in respect of remaining applicants is disposed of as withdrawn.

Rule is made absolute in above
terms.

(M.G. SEWLIKAR, J.)

(T.V. NALAWADE, J.)

SRM/9/12/19