

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 645 OF 2013

1. Shri Prashant s/o Manoharrao Bongirwar,
Aged about 44 Years, Occupation : Business,
R/o. 11 – A, Khare Town, Dharampeth,
Nagpur.
 2. Smt. Vrushali w/o Prashant Bongirwar,
Aged about : 40 Years, Occupation : Business,
R/o. 11 – A, Khare Town, Dharampeth,
Nagpur.
 3. Shri Raju s/o Laxmikant Itkelwar,
Aged about : 48 Years, Occupation : Business,
R/o. Dhantoli, Nagpur.
 4. Smt. Sunita w/o Manoj Itkelwar,
Aged about : 40 Years, Occupation : Dentist,
R/o. Rahate Colony Square,
Wardha Road, Nagpur.
 5. Smt. Manisha w/o Atul Yemsanwar,
Aged about : Years, Occupation : Business,
R/o. 33, Khare Town, Dharampeth,
Nagpur.
 6. Shri Atul s/o Manoharrao Yemsanwar,
Aged about : 50 Years, Occupation : Business,
R/o. 33, Khare Town, Dharampeth,
Nagpur.
-APPLICANTS**

// VERSUS //

1. State of Maharashtra
Through P. S. O. Sonegaon,
Distr. Nagpur.
2. Smt. Usha w/o Arjunrao Shinde,
Aged about : 54 Years, Occup. Agriculturist,
R/o. Juni Shukrawari, Tah. & Dist. Nagpur.

3. Shri Laxmikant s/o Babarao Masirkar,
Aged about : Major, Occup. Service,
R/o. Juni Shukrawari, Tah. & Dist. Nagpur.

4. Shri Sanjay s/o Maroti Kowe,
Aged about : 43 Years, Occupation : Service,
R/o. 104, K.G.H. Society,
Katol Road, Nagpur.

.... NON-APPLICANTS

Shri S. K. Mishra, Senior Advocate with Shri A. H. Mishra, Advocate
for the applicants.

Shri T. A. Mirza, A.PP for the non-applicant No.1/State.

Shri C. S. Dharmadhikari, Advocate for non-applicant Nos.2 and 3.

Shri J. M. Gandhi, Advocate for non-applicant No.4.

**CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATE : 05.01.2021.

ORAL JUDGMENT : [PER: Z. A. HAQ, J.]

1. Heard.

2. At the time of filing of this application under Section 482 of the Code of Criminal Procedure, the applicants had prayed that First Information Report No.161 of 2012 registered on the report lodged by the non-applicant No.4 – Sanjay Maroti Kowe, and First Information Report No. 17 of 2013 registered pursuant to lodging of the report by the non-applicant No.2 Smt. Usha Arjunrao Shinde and non-applicant No.3 – Laxmikant Babarao Masirkar be quashed.

3. At the time of hearing, it is pointed out that in the report lodged by the non-applicant Nos. 2 and 3 (Smt. Usha and Laxmikant), there was no reference of the names of the applicant Nos. 1, 2, 4 and 5 and the accusations were against the applicant nos. 3 and 6 and some other persons. During the pendency of this Criminal Application before this Court, charge-sheet came to be filed before the Trial Court vide Criminal Case No. 85 of 2014 and in the charge-sheet, the applicant Nos. 1 to 5 are not shown as accused and only the applicant No.6 alongwith some other persons is shown as accused. Hence, as far as the grievance of the applicant Nos. 1 to 5 in respect of their impleadment in the proceedings of First Information Report No.17 of 2013 is concerned, in our view, at this stage, there is no occasion for this Court to entertain the grievance of the applicant Nos.1 to 5 under Section 482 of the Code of Criminal Procedure.

4. Shri C. S. Dharmadhikari, learned Advocate for the non-applicant Nos. 2 and 3 submitted that because of the pendency of this criminal application before this Court, and the interim order, the non-applicant Nos. 2 and 3 have not been able to move appropriate application before the Trial Court for inclusion of the names of the applicant Nos.1 to 5 in the array of the accused.

5. As recorded earlier, we are not dealing with the grievance of the applicant Nos.1 to 5 in respect of the proceedings pursuant to First Information Report No. 17 of 2013. Hence, we leave it to the parties to avail appropriate remedy before appropriate forum, as per law.

6. As far as the grievance of the applicant No.6 in respect of the proceedings pursuant to First Information Report No.17 of 2013 is concerned, we find that there are no accusations against the applicant No.6, prima facie, on the basis of which he can be shown as accused in the charge-sheet filed in the matter. Hence, in our view, this is a fit case to exercise the jurisdiction under Section 482 of the Code of Criminal Procedure to prevent the abuse of process of Court. Therefore, First Information Report No. 17 of 2013 and the consequential charge-sheet bearing Criminal Case No. 85 of 2014 filed against the applicant No.6 – Atul Manoharrao Yemsanwar are quashed.

7. In respect of the First Information Report No. 161 of 2012 which is registered pursuant to the report lodged by the non-applicant No.4 – Sanjay Maroti Kowe, at the time of hearing, it is pointed out that the charge-sheet vide Criminal Case No. 84 of 2014 is filed before the Trial Court and the names of the applicant Nos. 1

to 5 are not included in the array of the accused. Hence, there is no occasion for this Court to examine the grievance of the applicant Nos.1 to 5, at this stage.

8. Needless to say that it would be open for the non-applicant No.4 – Sanjay Maroti Kowe to avail appropriate remedy, if he is aggrieved by the action of the non-applicant No.1 – Police Station Officer in not including the names of applicant Nos. 1 to 5 in the array of the accused.

9. In respect of the applicant No.6, Shri S. K. Mishra, learned Senior Advocate, on instructions, requested for permission to withdraw the Criminal Application and move appropriate application before the Trial Court for discharge at appropriate stage.

The request is granted.

10. The Criminal Application is disposed accordingly.

JUDGE

JUDGE