

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 CRIMINAL APPLICATION NO.343 OF 2022

ASHABAI WD/O. KACHARU DHUMAL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

.....
Advocate for Applicants : Mr. P. M. Shinde h/f Mr. Prashant B. Jadhav
APP for Respondent-State: Mr. R. V. Dasalkar
.....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 4th MARCH, 2022**

PER COURT:-

1. We have heard learned counsel for the applicants for some time. Learned counsel for the applicants submits that the false complaint has been filed against the applicants on account of civil dispute in respect of agriculture land. Learned counsel submits that applicant No.1 is widow of military soldier and she was allotted the land during partition with the brothers of her husband. The agriculture land of the father-in-law is adjacent to the land of respondent No.2 and there is dispute on account of encroachment over the lands. Learned counsel submits that the applicants have been falsely implicated on account of said civil dispute. There is delay of two days in lodging the complaint. There are no independent eye witnesses to the incident.

2. We have carefully gone through the contents of complaint. So far as the enmity on account of civil dispute is concerned, the same

is double edged weapon. In the case of **State of Odisha Vs. Pratima Mohanty and others** [Criminal Appeal Nos.1455-1456 of 2021 decided on 11.12.2021], the Supreme Court in paragraph no. 6.2 has made following observations :

“6.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.”

3. In the case of **State of Haryana and Others Vs. Bhajan Lal and Others**, reported in **1992 Supp. (1) SCC 335**, the Supreme Court has carved out the exceptions to the general rule, wherein the power under Section 482 of Cr.P.C. for quashing of F.I.R./criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. In para 102 of the judgment, the Supreme Court has carved out the said

exceptions. Para 102 is reproduced herein below:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1. 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.*
- 2. Where the allegations in the first information report and other materials, if any, accompanying the FIR 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 FIR 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.”*

4. In the instant case, though learned counsel for the applicants has vehemently submitted about false implication, however, this Court cannot go into the merits of the allegations by conducting mini

trial. This Court cannot make any enquiry into the truthfulness of allegations in any manner. It is well settled that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

5. So far as the exceptions as carved out in the above cited case of **State of Haryana and Others Vs. Bhajan Lal and others** are concerned, in the facts of the present case, it cannot be said that the case falls within any of the exceptions as carved out in para 102 of the case of **State of Haryana and Others Vs. Bhajan Lal and others (supra)**.

6. In the given set of allegations there is triable case against the applicants. Though learned counsel for the applicants has vehemently submitted that there is no eye witness to the incident, however, usually in the case of atrocities, hardly the independent witnesses come forward to give evidence. However, there are specific allegations in the complaint. In view of the same and in terms of the ratio laid down by the Supreme Court in the above cited cases, we are not inclined to entertain this criminal application. The criminal application is accordingly dismissed.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)

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