

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

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CRIMINAL APPLICATION NO.665 OF 2017

1. Atul Popat Bhopale

Age : 29 years, Occ: Advocate

2. Amol Popat Bhopale

Age 31 years, Occ: Agriculturist

3. Popat Pandharinath Bhopale

Age : 60 years, Occ : Agriculturist

4. Nanda Popat Bhopale

Age : 55 years : Occ: Household

5. Bablu Shivilal Bhopale

Age : 38 years, Occ: Agriculturist

6. Ranjit Shivilal Bhopale

Age : 42 years, Occ: Agriculturist

All residing at Dorlewadi,

Taluka- Baramati, District- Pune.

...Applicants.

Versus

1. The State of Maharashtra

(at the instance of Baramati
City Police Station, Baramati,
C.R. No.I-288/2017)

2. Sunil Nanaso Pagale

Age : 35 years, Occ: Agriculturist

residing at Dorlewadi

Taluka, Baramati, District -Pune

...Respondents.

Mr.Devidas Jadhav, Advocate for the Applicants.

Miss S. D. Shinde, APP for the State-Respondent No.1.

Mr.Mahadji Phalke, Advocate for the Respondent No.2.

***CORAM : REVATI MOHITE DERE &
R.N.LADDHA, JJ.***

DATE : 10 NOVEMBER, 2022.

JUDGMENT (Per R.N.Laddha, J.) :

Heard learned counsel for the parties.

2. Rule. The Rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties.

3. By this Criminal Application under Section 482 of the Code of Criminal Procedure, 1973, the Applicants seek the quashing of FIR No.I-288 of 2017 dated 13 April 2017, registered against them at Baramati City Police Station, Baramati, District-

Pune at the instance of Respondent No.2 for the offences punishable under Sections 143, 147, 148, 504 and 506 of the Indian Penal Code, 1860.

4. On 30 March 2017, Respondent No.2 lodged a First Information Report against the Applicants. It alleged that on 24 March 2017, at about 6.00 p.m., the Applicants came near the boundary mark of his agricultural land bearing Gat No.673 and objected to ploughing by claiming that the land and the water stream belonged to them. They further threatened him and his family members with dire consequences. Applicant No.1 Atul had an axe in his hand, whereas other Applicants were abusing and threatening him and his family members. According to Respondent No.2, at that time, he did not respond. He approached the Baramati City Police Station and lodged a report against Applicants No.1 to 4 vide Non-Cognizable Report No.398 of 2017. Further, he alleged that at the time of lodging of Non-Cognizable Report, he did not have photographs. Now he has photographs where the Applicants are seen. Moreover, he is

continuously receiving threats from the Applicants and therefore, again, he lodged a report i.e. present C.R. against the Applicants. He requested the police to seize the weapons from the Applicants, and they threatened him against the Applicants. With these allegations, F.I.R. came to be lodged for the above offences with the Baramati City Police Station, Baramati.

5. Mr Devidas Jadhav, learned Counsel appearing on behalf of the Applicants, submitted that Respondent No.2 had already lodged Non-Cognizable Report on 25 March 2017 for the alleged incident of 24 March 2017. The impugned FIR carried the same allegations levelled in the Non-Cognizable Report, as mentioned earlier, dated 25 March 2017. Mr Jadhav, the learned Counsel, further submitted that the allegations mentioned above in the impugned FIR against the Applicants herein, when read in their entirety and accepted as true, do not make out any case against the Applicants under Sections 143, 147, 148, 504 and 506 of the Indian Penal Code. He submitted that after investigation, chargesheet was also filed and presently the case is pending before

the Additional J.M.F.C. at Baramati. He pointed out that the alleged incident occurred on 24 March 2017, and there was no explanation for the delay in lodging the FIR. Mr Jadhav invited our attention to the NCR dated 25 March 2017 and the impugned FIR and submitted that there are many exemptions and additions made in the impugned FIR. He submitted that the case of the Applicants squarely falls within the exceptions, as held by the Hon'ble Supreme Court in the *State of Haryana Vs. Bhajan Lal*¹. Therefore, the impugned FIR is bad in law and needs to be quashed. On this premise, learned Counsel for the Applicants prayed for quashing the impugned FIR No.I-288 of 2017, dated 30 April 2017, registered against the Applicants with the Baramati City Police Station, Baramati.

6. Ms S.D. Shinde, learned Additional Public Prosecutor and Mr Mahadji Phalake, appearing for Respondent No.2, contested the contentions of the learned Counsel for the Applicants. They submitted that, while exercising the powers

1 1992 Supp (1) SCC 335.

under Section 482 of the Code of Criminal Procedure, the High Court is not required to enter into and consider the case's merits in detail, which as such, are required to be considered at the time of trial. They submitted that when there are serious triable allegations in the report, it is inappropriate to quash the FIR, exercising the powers inherent in the High Court. They submitted that the Applicants could not insist that this Court minutely examine the allegations made in the complaint to ascertain whether all the ingredients of the offence are present therein or not. They submitted that even though the inherent powers of this Court under Section 482 of the Code of Criminal Procedure to interfere with criminal proceedings are wide, such powers have to be exercised with circumspection and only in exceptional cases. They further submitted that initially, Respondent No.2 had lodged a report against Applicant Nos.1 to 4 only but later on, when he obtained photographs of Applicant Nos.1 to 6, and as the Respondent No.2 is receiving threats continuously from Applicants, he was constrained to lodge a report.

7. Further, they submitted that during the course of investigation police visited the scene of offence and drew Panchanama. The weapon-Axe was also seized. The police interrogated the witnesses and recorded their statements. As the investigation revealed the complicity of the Applicants herein the Investigating Officer lodged a chargesheet against them. In their view, the offences committed by the Applicants are the crimes against society and not against Respondent No.2 alone.

8. We have considered the rival contentions and perused the material on record.

9. The law on exercising powers under Section 482 of the Code of Criminal Procedure to quash the FIR is well settled. If the petition under Section 482 of the Code of Criminal Procedure was at the stage of FIR, in that case, the allegations in the FIR only are required to be considered, and whether a cognizable offence is disclosed or not is required to be considered. The High Court is not required to go into the merits of the allegations as if the High

Court is exercising the Appellate Jurisdiction and conducting the trial.

10. In the present case, Respondent No.2 has categorically stated that at the time of lodging the Non-Cognizable Report, he did not have photographs. Now he has photographs in which all the Applicants can be seen involved in the incident, so also, as he is continuously receiving threats from the Applicants, he lodged the FIR against the Applicants. It appears from the record that initially, Respondent no.2 had lodged FIR against Applicants no.1 to 4 only. After getting photographs wherein all the Applicants are seen, he lodged the impugned FIR. It also appears from the contents of the impugned FIR that by showing the weapons, the Applicants are threatening the Complainant. Insofar as the contents of the FIR are concerned, we prima facie, find that Respondent No.2/Informant has spelled out the offending acts of the Applicants, which were required to be investigated. In the instant case, the impugned FIR disclosed a prima facie commission of cognizable offence alleged by Respondent No.2 against the

Applicants. The Hon'ble Supreme Court in ***Bhajan Lal*** (*Supra*), has laid down the guiding principles to be considered in determining whether an FIR could be quashed, as under:

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 malafide 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.

103. We also give a note of caution to the effect 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; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

11. Upon perusal of the categories enumerated by the Hon'ble Supreme Court, in the case of ***Bhajan Lal*** (*supra*), it reveals that the case of the Applicants does not fall within any of the parameters, to quash the FIR. The condition precedent to the commencement of the investigation under the provisions of the Code of Criminal Procedure is that the FIR must disclose prima

facie that a cognizable offence has been committed. In the present case, the allegations made in the FIR prima facie do constitute a cognizable offence justifying the registration of a crime and an investigation thereon.

12. In *Dineshbhai Chandubhai Patel Vs. State of Gujrat*², it has been held that,

“29. The High court, in our view, failed to see the extent of its jurisdiction, which it possess to exercise while examining the legality of FIR, complaining commission of several cognizable offences by the accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court can not act like an investigating agency and nor can exercise the powers like an Appellate Court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

30. At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so, when the material relied on was disputed by the complainants and vice versa. In such a situation, it becomes the job of the

2 (2018) 3 SCC 104

investigating authority at such stage to probe and then of the Court to examine the questions once the chargesheet is filed alongwith such material as to how far and to what extent reliance can be place on such material.”

31. In our considered opinion, once the court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.”

13. *In Superintendent of Police, CBI Vs. Tapan Kumar Singh*³, the Hon’ble Supreme Court, in paragraph 22 has held that,

“The law does not require the mentioning of all the ingredients of the offence in the first information report. It is only after a complete investigation that it may be possible to say whether any offence is made out on the basis of the evidence collected by the investigating agency.”

14. In *State of Punjab Vs. Dharam Singh*⁴, the Hon’ble Supreme Court, in para 2 has held that,

“The High Court has, however, not confined

³ (2003) 6 SCC 175.

⁴ 1987 SCC (Cri) 621.

its scrutiny to the averments contained in the first information report but has traversed beyond and examined the case in the light of the contentions put forth by the respondents in their petition under Section 482 Cr.P.C. By indulgence in such exercise the High Court has come to the conclusion that the second respondent Cooperative Society cannot be termed a dealer of the alleged adulterated fertilizer distributed to its members because there was no sale involved in the transaction, that for the same reason the second respondent Society was not bound to obtain a Registration Certificate for selling fertilizer and furthermore the alleged sale of adulterated fertilizer was itself open to serious doubt because of conflicting analysis reports issued by the Chemical Analyst regarding the fertilizer and hence the emergent position is cognizable offences. Thus what the High Court has done is to go far beyond the contents of the first information report and enter into a discussion on the merits of the case before the Investigating Agency had conducted investigation and collected evidence.”

15. In **Kurukshetra University and Another Vs. State of Haryana and Another⁵**, the Hon’ble Supreme Court has observed thus,

“It surprises us in the extreme that the High

⁵ AIR 1977 SC 2229.

Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any Court in pursuance of the FIR. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice.”

16. Applying the law laid down by the Hon’ble Supreme Court in the decisions above to the facts in the case in hand, we are of the opinion that no case is made out to quash the impugned FIR. However, we abstain from discussing the statements of the witnesses and the extent of their substantiation of the FIR for fear of creating an unconscious impression on the trial Court. We wish to mention that this order should not be construed as having ruled on the merits of the matter. Consequently, the learned trial Court shall not be influenced by any of the observations made by us in this Judgment.

17. In light of the above, the present Criminal Application, being without merit, is accordingly dismissed.

R.N.LADDHA, J

REVATI MOHITE DERE, J.