



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 861 OF 2019

1. Santoshkumar S/o. Jagadeesh Mali
2. Satling Ram Samshetti
3. Lilavati Satling Samshetti
4. Akash Gajanan MurumkarApplicants

Versus

1. The State of Maharashtra
2. Mangal W/o. Nanasaheb NalawadeRespondents

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Advocate for Applicants : Mr. Ganesh Kore
APP for Respondent No. 1 : Ms. S.S. Joshi

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 04 MARCH 2024

FINAL ORDER (PER : SHAILESH P. BRAHME, J.) :

1. Heard both the sides finally for final disposal at the admission stage.
2. The applicants are seeking quashment of First Information Report, bearing C.R. No. 38 of 2019, Charge-sheet No. I 90 of 2019 and consequential RCC No. 1513 of 2019 pending against them.

3. When we express our disinclination to grant relief, application to the extent of applicant nos. 2 and 3 has been withdrawn. Thus, presently we are considering application for applicant nos. 1 and 4 only.

4. Respondent no. 2 is informant of the offence in question filed under Sections 452, 354, 323, 504 read with 34 of the Indian Penal Code, on 22.01.2019 with Satara Police Station, Aurangabad. It is alleged that informant and applicant nos. 1 to 3 are resident of the same apartment, Sai Shraddha at Garkheda, Aurangabad. On 21.01.2019 in the evening, there was altercation between informant and respondent nos. 1 to 3. Informant and her daughter were manhandled and modesty of the daughter was outraged.

5. Learned counsel for the applicants submit that they are falsely implicated in the offence because of the enmity of informant and her family members with applicants and other residents of the apartment. No case is made out as against applicant nos. 1 and 4. There are number of complaints filed against each other by the parties. Considering the rivalry amongst them, they are falsely implicated and the allegations are inherently improbable.

6. Learned APP and the learned counsel for respondent no. 2 repel the submissions. They would submit that specific role is attributed

to the applicants in first information report. Besides that supplementary statements of the witnesses make out, *prima facie*, case against applicant nos. 1 to 4. According to them, this is not a fit case to exercise jurisdiction under Section 482 of Code of Criminal Procedure.

7. We have considered rival submissions of the parties. We have gone through relevant papers of the investigation. There is no dispute that applicant nos. 1 to 3 and informant are resident of Sai Shraddha Apartment. On 22.01.2019, in all three complaints have been filed with the concerned police station. Impugned FIR is filed by respondent no. 2. Report bearing C.R. No. 37 of 2019 was filed by applicant no. 3 against son of respondent no. 2 – Sandesh. One non-cognizable case was registered at the instance of Kajal Mohan Thakare who is also the occupant of the same apartment against respondent no. 2, her son and daughter.

8. It further reveals that prior to lodging impugned FIR on 29.05.2017, applicants had filed complaint against informant and her husband, bearing C.R. No. 288 of 2017. On 06.03.2018, applicant no. 2 had filed written complaint to the Satara Police Station, against informant and her family members. On 05.02.2019, the applicants and other persons had filed complaint to the concerned police station against informant and her family members. Considering above complaints, it is

abundantly clear that informant and her family members are at the loggerheads with applicant nos. 1 to 3. There are proceedings pending against them.

9. We have considered allegations in the first information report as well as supplementary statement of informant and the statements of Kashinath and Suraksha. Kashinath is father-in-law of the informant and Suraksha is daughter of the informant. Pertinently, the allegation of offence under Section 354 is against applicant no. 2. Material on record does indicate specific role of applicant nos. 2 and 3. We do not find any, *prima facie*, case to attract the offence alleged to the extent of applicant nos. 1 and 4.

10. Applicant no. 4 is not the resident of Sai-Shraddha Apartment. His name is referred only in the impugned FIR. His name does not appear in any other complaints. We have no hesitation to hold that in the absence of any incriminating material against him he is facing trial for no reason.

11. There is every possibility that applicant nos. 1 and 4 are being implicated because of the rivalry between family of the informant and that of applicant no. 2. Present case is squarely covered by parameters laid down by Supreme Court in the matter of *State of*

Haryana and others Versus Ch. Bhajan Lal and another, **AIR 1993 SC 1348**. To wreck vengeance, the impugned complaint is filed against applicant. It would be an abuse of process of law to compel applicant nos. 1 and 4 to undergo trial. We are, therefore, inclined to allow application to their extent.

ORDER

- i. Criminal Application is allowed to the extent of applicant nos. 1 and 4 only.
- ii. Impugned FIR bearing CR No. 38 of 2019, charge-sheet no. I 90 of 2019 and consequential RCC no. 1513 of 2019 to the extent of applicant nos. 1 and 4 are quashed and set aside.
- iii. Criminal Application stands disposed of.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]