

(2015) 07 BOM CK 0035

In the Bombay High Court

Case No : Criminal Application No. 2659 of 2014

Ganesh and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482

Citation : (2015) ALLMR(Cri) 3227 : (2016) 1 BomCR(Cri) 830 : (2016) 1 DMC 21

Hon'ble Judges : S.S. Shinde, J;A.I.S. Cheema, J

Bench : Division Bench

Advocate : S.S. Panale, for the Appellant; B.L. Dhas, APP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.S. Shinde, J—Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties. Heard the learned counsel appearing for the applicants, learned counsel appearing for the original complainant and learned A.RP. for the State. The learned counsel appearing for the applicants submits that already the application of applicant No. 1 Ganesh s/o Mangal Giri and applicant No. 4 Shakti d/o Mangal Giri has been dismissed as withdrawn. Therefore, the adjudication of this application is confined to applicant No. 2 Mangal s/o Narayan Giri and applicant No. 3 Pushpa w/o Mangal Giri. The learned counsel for applicants invited our attention to the allegations in the F.I.R. and also the statements of the witnesses recorded during the investigation, and submits that, even if the allegations in the complaint are considered in its entirety, no offence is disclosed against the applicants. It is submitted that, the investigating officer has filed charge sheet and collected the evidence. Upon perusal of the statements of the witnesses, no specific overt act is attributed to the applicants. There are no material particulars on which date and what time the applicants had given cruel treatment to the complainant. Therefore,

according to the learned counsel appearing for the applicants, the material collected by the prosecution agency involving the applicants, lacks from material particulars and no any specific overt act is attributed to them, the further proceedings based upon Crime No. 37/2014 is an abuse of the process of the Court, and the applicants will have to face agony of the trial though they are not involved in the alleged offence.

2. On the other hand, learned counsel appearing for the original complainant submits that, the allegations in the F.I.R. and the statements of the witnesses will have to be read as it is and those allegations can be tested only during trial and, therefore, this Court, while exercising jurisdiction under Section 482 of the Criminal Procedure Code, may not quash the proceedings arising out of Crime No. 37/2014. The learned A.P.P. also submits that the prosecution agency has collected sufficient material and, therefore, the trial can proceed against the applicants.

3. We have given careful consideration to the submissions made by the learned counsel for the applicants and learned counsel for the original complainant and learned A.P.P. for the State. With their able assistance, we have carefully examined the allegations in the F.I.R. and annexures thereto and accompaniments of the charge sheet. Upon careful perusal of the allegations in the F.I.R., there are general allegations against the applicants. No any specific date is mentioned and no any specific overt act has been attributed qua each applicant. The relevant portion from the F.I.R. for the purpose of deciding this application reads thus:

4. Upon careful perusal of the allegations in the F.I.R., it is alleged that the complainant brought Rs. 40,000/- from the parents and some amount was handed over to the husband in presence of father-in-law and mother-in-law. There is further allegation that mother-in-law and father-in-law used to instigate husband, and husband used to assault the complainant. However, on which date and during which period said instigation was given and as a result when husband assaulted the complainant, has not been stated in the complaint. There are general allegations. So far incident dated 2.12.2013, during 11.30 to 12.00 Hrs. is concerned, though the presence of the father-in-law and mother-in-law is stated by the complainant, no any specific overt act is attributed to them. Overt act is attributed to husband and two sisters of the husband. We may assume for a moment that the father-in-law and mother-in-law were present and they did nothing to rescue the complainant. We cannot accept the argument of the counsel appearing for the applicants that those allegations would attract commission of offence by the father-in-law and mother-in-law as alleged by the complainant in the complaint. We have also carefully perused the statements of the witnesses recorded during the course of investigation. Those statements also show similar allegations like in the complaint and, therefore, in our considered view, the material collected by the prosecution agency is not sufficient to try the applicants and the further proceedings based upon Crime No. 37/2014 so far

present applicants are considered, will be abuse of process of the Court and exercise in futility. Apart from that, when upon undisputed position, we find that there is no sufficient material to try the applicants, the applicants should not face agony of facing the trial when both of them are senior citizens. Therefore, in the facts and circumstances of this case, we are inclined to allow this application.

5. The Supreme Court, in the matter of State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp , has laid down following categories:

"(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 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 persona grudge."

6. The present case is covered in category No. 1, 3 and 5. Rule is made absolute in terms of prayer clause (B-1). The First Information Report in Crime No. 37/2014 registered at M.I.D.C. Latur Police Station and proceedings arising out of the said Crime are quashed so far as applicants No. 2 and 3. Criminal Application stands disposed of. We make it clear that we have adjudicated the

controversy applicable to the applicants No. 2 and 3 herein and not in respect of other accused who are named in the F.I.R.