

(2017) 01 BOM CK 0101

In the Bombay High Court

Case No : Criminal Application No. 5005 of 2016

Sanjay S/o Bhimrao Tathe

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, Section 34, Section 498A, Section 504,
Section 506

Citation : (2017) ALLMRCri 696 : (2017) 2 BomCR(Cri) 311 : (2017) MCR 246 :
(2017) 1 MhLJCrI 788

Hon'ble Judges : S.S. Shinde and K.K. Sonawane, JJ.

Bench : Division Bench

Advocate : Mr. S.S. Panale, Advocate, for the Applicants; Mr. M.M. Nerlikar, APP,
for the Respondent/State; Mr. M.D. Gitte, Advocate, for the Respondent no.2

Final Decision : Allowed

Judgement

S.S. Shinde, J. (Oral) - Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. This application is filed praying therein for quashing and setting aside the F.I.R. bearing C.R. No.652/2016 registered with Mukundwadi Police Station, Aurangabad for offences punishable under Sections 498A, 323, 504, 506 r/w 34 of the Indian Penal Code to the extent of the applicants.

3. The learned counsel appearing for the applicants invites our attention to the contents of the F.I.R. and submits that, there are omnibus allegations against the applicants. There are no specific allegations with specific dates, and therefore, the F.I.R. deserves to be quashed, by keeping in view the parameters laid down by the Hon'ble Apex Court in the case of State of Haryana v. Bhajanlal, AIR 1992 SC 604. He further submits that applicant no.1 is the husband of applicant no.2. Applicant no.2 is married sister of Anil, who is husband of complainant. Her marriage was solemnized in the year 2002 with applicant no.1. They are residing

at Aurangabad. Applicant no.1 is serving at Jalna in Postal Department. He further submits that applicant no.4 is the sister of Anil and applicant no.3 is the husband of applicant no.4. The marriage of applicant no.4 was solemnized with applicant no.3 in the year 2007. They are residing at Aurangabad. Earlier one year back, applicant no.3 was serving at Daund, Pune in Police Department. The applicants had no occasion to visit the matrimonial home frequently. They are busy in their work. It is submitted that, if the allegations in the F.I.R. are taken at its face value and considered in its entirety, ingredients of the alleged offences are not attracted, and therefore, the F.I.R. deserves to be quashed.

4. On the other hand, the learned A.P.P. appearing for the Respondent/State and the learned counsel appearing for Respondent No.2 invited our attention to the specific allegations in the F.I.R. against the applicants and submits that, those allegations will have to be tested during the trial, and even it is not permissible for this Court to entertain the application and consider allegations in a summary manner. Therefore, they jointly submit that, the application may be rejected.

5. We have heard the learned counsel appearing for the applicants, the learned A.P.P. appearing for the Respondent/State and the learned counsel appearing for Respondent No.2 at length. With their able assistance, we have perused the averments in the application, annexures thereto, contents of the F.I.R. and also the statements of the witnesses recorded by the Investigating Officer during the course of investigation.

6. The allegations relating to the applicants in the F.I.R. are as under :-

"1- ----- ukes lqjHkh fgP;k [kkR;krqu nksu Gk[k :i;s ekb;k [kkR;kr VkdGs o lnjhG jDde gh ekb;k irhus ek>s ,0Vh0,e0 }kjks dk<+qu lkljP;k Gksdkauh dk<+qu ?ksrGh o eh vkSjaxkckn ;sFks ,d= dqVqac jkg.;klkBh xsGs R;kuarj eh ekgsjh lklq] lkljk o uaun ;kauh rq fnlk;Gk dkGh vkgs0 vkeP;k ?kjr "kksHkr ukgh0 vls Eg.kqu eGk viekudkj d cksy.;kl lq:okr dsGh0

2- ---- ek>s lklq lkljs uank o uaUnps irh ek>k irhGk ,dkps nksu lkaxqu ek>k fo"kh R;kap;k eukr }s"kh Hkkouk fuekZ.k djhr gksrs ek>s irh gs ekb;k lkljP;k Gksdkaps ,sdqu eGk ekjgku d:u o f"kohxkG d:u ek>s ofMGkdMqu iq.ks ;sFks 50 rs 60 Gk[k :i;s ns;kosr Eg.kqu eGk ek>s irh] ek>k uank o uankups irh lklq lkljs gh gs loZ t.k ekx.kh djhr gksrs0

3- ----- ;k loZ ckchalkBh 1- vfuy lkgscjko gjdG ikfVG uojk jk0 jkeuxj flMdks ,u&2 vkSjaxkckn 2- lkgscjko fHkolu gjdG lkljs 3- deykckbZ lkgscjko gjdG lklq] 4- lqfuy lkgscjko gjdG eksBk Hkk;k 5- HkkX;kJh lqfuG gjdG tkm 6- fejk lat; rkBs uaun jk0 Hkkuqnkluxj vkSjaxkckn] 7- lat; rkBs uanbZ jk0 lnj] 8- rstLohuh mQZ fgjk izdk"ckansz uaun jk0 pkVs LdqG fcMck;ikl vkSjaxkckn 9- izdk"ckansz uanbZ jklmj bR;knh eaMGh g;k dkj.khHkqr vkgs o ekb;k uansps irh Eg.krkr dh vkEgh loZ dzkbZe czkap e/kqu rqb;k o rqb;k ekgsjP;k Gksdku fo:) osx osxG;k [kksV;k rdzkh nk[kG d: o rqGk =kl nsm vkEgh dksUgkGkgh ?kkcjr ukgh v"kk izdkjP;k / keD;k nsr vkgsr rjh ;k loZ t.kku fo:) xqUgk uksan d:u dMd dk;nsf"kj dk;Zokgh djkoh o eGk lqjf{kr tx.;kph la/kh n;koh o laj{k.k n;kos o eGk U;k; feGkok ek>k

ofjG tckc gk ek>s lkax.;kizek.ks fGghGk vlqu eh okpqu ikfgGk o cjkscj o [kjk vkgs0"

7. Upon careful perusal of the allegations in the F.I.R. and also the statements of the witnesses, no specific date is mentioned, no specific instances are quoted or specific overt acts are attributed qua the applicants. Admittedly, the applicants are residing at Aurangabad. Respondent No.2 has not placed anything on record to counter the contentions of applicant nos.1 and 3 that, they are serving at Jalna and Aurangabad respectively at present.

8. The Supreme Court in the case of State of Haryana v. Bhajanlal (supra), while considering the case for quashment of the F.I.R./charge-sheet, has laid down the following categories :-

1. Whether the allegations made in the F.I.R. 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 F.I.R. do not disclose a cognisable offence, justifying an investigation by police officers under Section 156(1) of the Code, except under an order of Magistrate within the purview of Section 155(2) of the Code;

3. Where the uncontroverted allegations made in the F.I.R. 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 applicant;

4. Where the allegations in the F.I.R. do not constitute a cognisable 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 F.I.R. 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 provisions in the Code of 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.

9. As already observed, an allegations against the applicants are omnibus and without attributing any overt acts qua each of the applicants. The case of applicants is covered under category Nos.1, 3 and 5.

10. In that view of the matter, the application is allowed in terms of prayer clause "B" and the same stands disposed of. Rule made absolute accordingly. However, we make it clear that, the order passed today is confined only to the present applicants and the Investigating Officer is free to proceed further against the husband and the other accused, if any.