

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

**CRIMINAL WRIT PETITION NO. 520 OF 2016
(WITH CRIMINAL APPLICATION NO.2059 OF 2017)**

1. Baban S/o Shripati Gaikwad
Age : 75 years, Occ : Agri.,
2. Babasaheb S/o Baban Gaikwad
Age : 40 years, Occ : Agri.,

Both R/o Ramwadi, Tq. Vaijapur Gramin-1,
Tq. Vaijapur, Dist. Aurangabad.
3. Ravindra Bahusaheb Gaikwad
Age : 37 years, Occ : Service,
R/o Fulewadi, Tq. Vaijapur,
Gramin-1, Tq. Vaijapur,
Dist. Aurangabad.
4. Bahusaheb Bapurao Gaikwad
Age : 67 years, Occ : Nil,
5. Reshmabai Bhausahab Gaikwad
Age : 62 years, Occ : Nil,
6. Nilesh Bhausahab Gaikwad
Age : 34 years, Occ : Agri.,

Petition Nos.4 to 6
R/o Fulewadi, Tq. Vaijapur
Gramin-1, Tq. Vaijapur,
Dist. Aurangabad.

7. Bharati Indraraj Gaikwad
Age : Major, occ : Household,
R/o Ramwadi, Vaijapur Gramin-1,
Tq. Vaijapur, Dist. Aurangabad
Bharati Bhimrao Gore
Age : Major, Occ : Household,
R/o Fulewadi, Tq. Vaijapur,
Tq. Vaijapur, Dist. Aurangabad

8. Babasaheb Shivram Abhang
Age : 45 years, Occ : Agri.,
R/o Rotegaon, Tq. Dist. Jalgaon.

..PETITIONERS

VERSUS

1. The State of Maharashtra
Through : Begampura Police
Station, Aurangabad

2. Tarabai Shantilal Tilekar
Age : 35 years, Occ : Agri.,
R/o Ramwadi (Tilekar Vasti),
Vaijapur Gramin-1,
Tq. Vaijapur, Dist. Aurangabad.

..RESPONDENTS

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Advocate for petitioners : Mr.K.C. Sant
APP for Respondent/State : Mr. P.G. Borade
Advocate for respondent no.2 : Mr. V.C. Patil
holding for Mr. S.M. Gotsay

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**CORAM : S.S. SHINDE &
K.K. SONAWANE, JJ.**

**RESERVED ON : 27 April, 2017
PRONOUNCED ON : 3rd May, 2017**

JUDGMENT (PER S.S. SHINDE, J)

Heard the learned counsel appearing
for the petitioners and the learned A.P.P.
appearing for the respondent/State.

2. The learned counsel appearing for

the petitioners submits that, the petitioners may be allowed to amend the Petition in view of filing charge-sheet by the Investigating Officer on 16th November, 2016. It appears that, Writ Petition was filed on 7th April, 2016. Thereafter, this Court issued notices to the respondents on 26th April, 2016. There was no impediment for Investigating Officer to proceed with the investigation and even for filing the charge-sheet. Accordingly, the charge-sheet is filed in the month of November, 2016. The petitioners did not take immediate steps to amend the Petition and kept the Petition pending for considerable time and after six months, the prayer is made to allow the petitioners to amend the Petition.

3. When Writ Petition is pending and the charge-sheet is filed in the month of November, 2016, without seeking leave of this

Court, the petitioners have attempted to file the application and take additional documents on record. Keeping in view the pendency of Writ Petition and the fact that, the charge-sheet is filed way back in the month of November, 2016, it is not desirable to entertain application for amendment of the Writ Petition. As already observed, the charge-sheet is filed in the month of November, 2016 and this Court is not made aware about the further development, which has taken place before the trial Court. Be that as it may, we are not inclined to allow the application, hence the Criminal Application no.2059 of 2017 stands disposed of.

4. The learned counsel appearing for the petitioners invites our attention to the allegations in the first information report and submits that, the allegations in the

first information report are taken at its face value and read in its entirety, the alleged offences have not been disclosed. There are no overt acts attributed qua the petitioners and there are general allegations. Therefore, relying upon the pleadings in the Petition, grounds taken therein, and also the judgment of the Hon'ble Apex Court in the cases of **Netai Dutta V/s State of W.B.¹**, **M. Mohan V/s State Represented by the Deputy Superintendent of Police²** and **State of Kerala and others V/s S. Unikrishnan Nair and others³** and unreported judgment in the case of **Aniruddha S/o Ganesh Pathak V/s State of Maharashtra in Criminal Application no.2219 of 2008 decided on 21st November, 2009**, the learned counsel appearing for the petitioners submits that, the Petition deserves to be allowed.

1 AIR 2005 SC 1775

2 2011(3) Mh.L.J. (Cri.) 127

3 2016(3) Mh.L.J. (Cri) 485

5. On the other hand, the learned A.P.P. appearing for the respondent/State invites our attention to the accompaniments of the charge-sheet and submits that, the note written by deceased Shantilal Kishanlal Tilakar, the husband of respondent no.2, is recovered. He has named all the petitioners. Other incriminating material is also collected by Investigating Officer during the investigation. There are statements of the witnesses, which support the allegations in the first information report. It is submitted that, the allegations in the first information report clearly attracts an ingredients of section 107 and section 306 of the I.P. Code. The allegations in the first information report and the material collected by the Investigating Officer would also disclose the alleged offences punishable under Sections 406, 420 and 506 etc., read with 34 of the I.P. Code.

6. Upon hearing the learned counsel appearing for the petitioners, the learned A.P.P. appearing for the respondent/State and upon careful perusal of the contents of note written by the deceased Shantilal before his death, the statements of the witnesses and the report of Handwriting expert and all other material collected by the Investigating Officer, in our opinion, it is not justifiable to entertain the prayer for quashing the first information report. The Hon'ble Supreme Court has consistently taken a view that, no doubt, under Section 482 of the Code of Criminal Procedure, the High Court has inherent power to quash the criminal proceedings in an appropriate cases, even in those cases which are not compoundable. However, this power is to be exercised sparingly and with caution.

7. As already observed, the charge-sheet is already filed. The alleged offences are not only disclosed under section 306 but under the provisions of Sections 406, 420, 506 etc., read with 34 of the I.P. Code. In that view of the matter, we are not inclined to entertain the prayer for quashing the first information report. In case the charge is not already framed by the trial Court, it would be open for the petitioners to approach the trial Court by way of filing the application for discharge. In case, the petitioners file the application for discharge within four weeks from today, the concerned Court to decide the same, as expeditiously as possible, and preferably not later than eight weeks from filing such application, keeping in view of the fact that, the charge-sheet is filed long back in the month of November, 2016.

8. With the above observations, the Petition stands disposed of. An observations made hereinbefore are, prima facie, in nature and confined to the adjudication of present Writ Petition and the trial Court shall not get influenced by the said observations while entertaining the application for discharge or during the trial, as the case may be.

(K.K. SONAWANE, J.)

(S.S. SHINDE, J.)

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