

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

CRIMINAL APPLICATION NO. 5939 OF 2015

PRAKASHSINGH CHUNNUSINGH RAJPUT AND
OTHERS.

VERSUS

THE STATE OF MAHARASHTRA & ANOTHER

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Advocate for Applicants : Mr K A Ingle & D S Jadhav

APP for Respondents : Mr P G Borade

Advocate for Respondent 2 : Mr A N Kakade

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CORAM : V.K. JADHAV, J.

Dated: August 29, 2016

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PER COURT :-

1. The applicants are seeking quashment of the proceedings pending before the 14th Judicial Magistrate First Class, Aurangabad bearing Criminal M.A. No.43/2015 under section 12 of the Protection of Women from Domestic Violence Act.

2. Brief facts, giving rise to the present application are as under :-

Respondent No.2 got married with Dharamsingh Rajput on 26.1.2014 as per Hindu rites and rituals at Aurangabad. Both the families are related even prior to the solemnization of the said Marriage. After marriage,

respondent No.2-wife started cohabiting with the husband. However, on account of certain differences between the parties, respondent no.2-wife started residing with her parents. Even, husband Dharamsingh had filed a petition before the Family Court, Aurangabad against present respondent no.2 for Restitution of Conjugal Rights bearing HMP No.172/2014. In that petition, compromise had taken place between them and in terms of the said compromise, respondent no.2-wife again started cohabiting with her husband Dharamsingh Rajput. However, on the day of festival of Rakshabandhan of the year 2014 respondent no.2-wife went to her parents house on account of certain differences. Furthermore, respondent no.2-wife has also filed a Criminal M.A. No.43/2015 under section 12 of the Protection of Women from Domestic Violence Act against her husband and the present applicants. The applicants appeared in the said proceedings and even the learned Judicial Magistrate First Class, Aurangabad passed an order of interim maintenance against her husband.

3. The learned counsel for the applicants submits that, so far as the applicant nos. 3 to 5 are concerned, there are general allegations against them in the application bearing Cri.M.A.No.43/2015. Learned counsel submits that, the applicant No.3 is the married sister of husband Dharamsingh and applicant no.4 is husband of applicant no.3. Both of them are residing at different place. Furthermore, applicant No.5 got married recently and she is cohabiting with her husband at Jalna. Learned counsel submits that, there are general allegations and no specific incidents have been quoted nor any role is ascribed to the applicants no. 3 to 5. Learned counsel submits that, there are certain allegations against applicants no. 1 and 2, however, allegations against applicants no. 3 to 5 are general in nature and, they are also not the part of the family of the husband Dharamsingh and applicants No.1 and 2.

4. Learned counsel for respondent no.2 submits that, respondent no.2 was subjected to ill-treatment by her husband Dharamsingh and all the applicants on

account of non-fulfillment of their unlawful demands. She was subjected to abuses, severe beating etc. Even she was not permitted to contact with the persons from her maternal side and she was not allowed to visit her parents house on the festival of Rakshabandhan.

5. On careful perusal of the complaint, it appears that general allegations have been made against applicants no.3 to 5. It is not disputed that applicant no.3 is married sister of husband Dharamsingh and she is residing with her husband applicant No.4. It is also not disputed that the applicant no.5 got married and she is also residing with her husband at Jalna. It has alleged in the said criminal application that the applicants no. 3 to 5 alongwith the applicants no.1 and 2 and husband of respondent no.2 were also subjecting her to cruelty on account of non-fulfillment of their demands. Except this, no specific incidents have been quoted in the complaint, nor any particular role ascribed to them in the backdrop of allegations of the ill-treatment extended to respondent no.2-wife.

6. In a case of **Preeti Gupta and another Vs. State of Jharkhand and another** reported in **(2010) 7 Supreme Court Cases 667** in paragraph no.35 of the Judgment has made following observations :-

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. ”

In a case of **Geeta Mehrotra and another Vs. State of Uttar Pradesh and another** reported in **(2012) 10 Supreme Court Cases 741** the Supreme Court in paragraph No.20 and 25 of the Judgment has made following observations :-

20. "Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.
25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law."

7. So, in view of the above discussion and the ratio laid down by the Apex Court in the above two cases, I am inclined to allow this application to the extent of applicant nos. 3 to 5. Hence, following order.

ORDER

- I. Criminal Application is hereby partly allowed in terms of prayer clauses '**B**' **and 'C'** to the extent of applicant nos. 3 to 5.
- II. Criminal Application is hereby rejected as against applicant nos. 1 and 2.
- III. Criminal application is accordingly disposed of.

(V.K. JADHAV, J.)

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