

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

951 CRIMINAL APPLICATION NO. 174 OF 2021

1. Prasad s/o Bhaskar Bhivsane,
Age – 29 years, Occu. - Private Service
2. Suman w/o Bhaskar Bhivsane,
Age – 69 years, Occu. - Household
3. Sulbha d/o Bhaskar Bhivsane
Age 26 years, Occu. - Household

Applicants 1 to 3 R/o :
N-13, Hudco Corner,
Wankhede Nagar, Aurangabad.

4. Ratnakar s/o Laxman Dandge,
Age – 56 years, Occu. - Service
5. Seema w/o Ratnakar Dandge,
Age – 50 years, Occu. - Household,

Applicants 4 and 5 R/o :
C/o S. S. Neluri,
Behind Bembde Hospital,
Satara Parisar, Aurangabad.

6. Sunil s/o Laxman Dandge,
Age – 52 years, Occu. - Auto Driver,
R/o. Bhimshakti Nagar,
Satara Khandoba, Aurangabad.

... Applicants/
Accused

Versus

1. The State of Maharashtra
Through the Investigating Officer,
Osmanpura Police Station, Aurangabad.

2. Varsha w/o Prasad Bhivsane,
Age – 29 years, Occu. - Household,
R/o Lane No. 3, Ramanagar,
Krantichowk, Aurangabad. ... Respondents

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Advocate for Applicants : Mr. Dhananjay A. Naik
APP for Respondent No.1-State : Mr. Sachin J. Salgare
Advocate for Respondent No. 2 : Mr. M. A. Khan

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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 24th AUGUST, 2021**

PER COURT:-

1. We have heard learned counsel for the applicants for some time. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant no.1 Prasad s/o Bhaskar Bhivsane (husband of respondent no.2) and applicant no.2 Suman w/o Bhaskar Bhivsane (mother-in-law of respondent no.2).
2. Leave granted. The Criminal Application to the extent of applicant nos. 1 and 2 is dismissed as withdrawn.
3. Heard finally with consent at admission stage.

4. This application is filed for quashing of the criminal proceedings bearing R.C.C. No. 780 of 2021.

5. Learned counsel for the applicants submits that applicant no.3 is the sister-in-law of respondent no.2. Applicant nos. 4 and 6 are the maternal uncles and applicant no. 5 is the maternal aunt of co-accused husband Prasad. Learned counsel submits that the allegations have been made mainly against co-accused Prasad (husband of respondent no.2) and co-accused Suman (mother in law of respondent no.2), whose application has been withdrawn today. It has been alleged in the complaint that respondent no.2-informant was subjected to ill-treatment on two counts. Firstly, that she gave birth to two female children and secondly, on account of non-fulfillment of the unlawful demand of Rs.5,00,000/-. Learned counsel submits that so far as applicant nos. 3 to 6 are concerned, though their names are mentioned in the FIR, vague and omnibus allegations have been made against them. It has been revealed during the course of investigation that the applicants allegedly instigated the co-accused to ill-treat the informant for the aforesaid two reasons. Learned counsel submits that no specific incidents of

instigation have been quoted, nor the same has been revealed during the course of investigation. Learned counsel submits that in the backdrop of these vague allegations, continuation of the criminal proceeding against the applicants would be abuse of the court process.

6. Learned counsel for respondent no.2 submits that so far as applicant no.3 is concerned, she is the sister-in-law of respondent n.2-informant and residing with co-accused Prasad and Suman. The names of the applicants are mentioned in the FIR. Respondent no.2-informant was subjected to cruelty and the present applicants used to instigate co-accused Prasad (husband of respondent no.2) and co-accused Suman (mother-in-law of respondent no.2). Learned counsel submits that there are specific allegations against all the accused persons and the case of present applicants cannot be segregated. Learned counsel submits that the allegations in the complaint and the investigation carried out in respect of those allegations makes out a case for trial. This application seeking quashing of the proceedings is thus liable to be dismissed.

7. We have also heard learned APP for the respondent-State.

8. We have carefully gone through the contents of the complaint, so also the charge-sheet. Though names of the applicants are mentioned in the FIR, however, the allegations have been made mainly against co-accused Prasad and co-accused Suman, whose application has been withdrawn today. It is simply alleged in the complaint that applicant nos. 3 to 6 used to instigate these co-accused to ill-treat respondent no.2-informant for two reasons, firstly, that respondent informant gave birth to two female children and secondly, there was non-fulfillment of the unlawful demand of Rs.5,00,000/-.

9. In the case of *State of Haryana and Others v. Bhajan Lal and Others*, reported in 1992 Supp. (1) SCC 335, in para 102, the Supreme Court has given the categories of cases by way of illustrations wherein such quashing power under Section 482 of Cr.P.C. could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. In para 102((3), (5) and (7), the following categories are mentioned by the Supreme Court:

“(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;

(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.

(7) Where a criminal proceeding is manifestly attended with mala fide 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.”

10. Furthermore, in the case of ***Geeta Mehrotra and others v. State of U.P. and others***, reported in ***AIR 2013 SC 181***, the Supreme Court has observed that, “Courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR

prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

11. In the case of ***Neelu Chopra and others v. Bharti***, reported in (2009) 10 SCC 184, in para 5, the Supreme Court has made the following observations:

“5. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not be all and end of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already

expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein on the basis of vague and general complaint which is silent about the precise acts of the appellants.”

12. In the case of ***Taramani Parakh v. State of Madhya Pradesh and others***, reported in (2015) 11 SCC 260, the Supreme Court in para 10 has observed that, “The law relating to quashing is well settled. If the allegations are absurd or do not make out any case or if it can be held that there is abuse of process of law, the proceedings can be quashed but if there is a triable case the court does not go into reliability or otherwise of the version or the counter-version. In matrimonial cases, the courts have to be cautious when omnibus allegations are made particularly against relatives who are not generally concerned with the affairs of the couple.”

13. In the instant case, we find that the allegations are omnibus, involving almost all the family members including the distant relatives. It further appears from the tenor of the allegations so also

the addresses of the accused persons in the FIR itself, that accused nos. 4, 5 and 6 are residing at different places. It is not clear from the allegations, since no specific incidents are quoted, as to when these accused have instigated the husband and the mother-in-law to ill-treat the respondent-informant for the causes as detailed in the complaint. Moreover, even though applicant no. 3 resides with the co-accused Prasad and Suman, however, applicant no.3 is the sister-in-law of the respondent-informant and general allegations have been made against her about instigation. Thus, the allegations as against these applicants-accused are absurd in nature. The ratio laid down by the Supreme Court in the aforesaid cases is squarely applicable to the facts and circumstances of the present case. We accordingly proceed to pass the following order:

ORDER

The Criminal Application is allowed to the extent of applicant nos. 3 to 6 in terms of prayer clause "C-1" and disposed off accordingly.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)