

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

34 CRIMINAL APPLICATION NO.411 OF 2020

DEEPAK KISHOR AHUJA AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicants : Mr. Sawant Amol S.
APP for Respondent-State: Mr. S.J. Salgare
Advocate for Respondent No.2 : Mr. A.B. Girase h/f Mr. Yogesh B. Bolkar
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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 4th OCTOBER, 2021**

PER COURT:-

1 Heard.

2. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant Nos. 1 to 4. Leave granted. The application of applicant Nos.1) Deepak Kishor Ahuja, 2) Kishor Rupchand Ahuja, 3) Meena Kishor Ahuja and 4) Ravi Kishor Ahuja is dismissed as withdrawn.

3. This application is filed for quashing of F.I.R. No. 287 of 2019 registered at Upnagar police station, Nandurbar so also the criminal proceeding i.e. R.C.C. No. 3 of 2020 pending before the Chief Judicial Magistrate, Nandurbar.

4. Learned counsel for the applicants submits that though the names of the applicants are mentioned in the F.I.R., however, no specific allegations have been made against them and there are general allegations. Learned counsel submits that applicant No.5 is wife of co-accused Ravi, who is brother-in-law of respondent No.2. Applicant No.6 Sakhubai is 70 years of age and is sister of father-in-law of respondent No.2. The applicant No.7 is a distant relative. Learned counsel submits that the allegations have been made mainly against co-accused No.1) Deepak Kishor Ahuja, 2) Kishor Rupchand Ahuja, 3) Meena Kishor Ahuja and 4) Ravi Kishor Ahuja, whose application seeking quashing of F.I.R. so also quashing of criminal proceedings came to be withdrawn today. Learned counsel submits that it is case of over-implication and all family members have been implicated in connection with the present crime.

5. Learned counsel for respondent No.2 informant submits that so far as applicant No.5 is concerned, there is specific incident quoted in the F.I.R. allegedly occurred on 28.7.2019. There is one independent witness whose statement is recorded during the course of investigation to support the said allegation. Learned counsel submits that the names of the applicants are mentioned in the F.I.R. with specific roles attributed to each of them. Learned counsel submits that from reading of the complaint, it cannot be held that even if the allegations are taken as proved, no case is made out against the applicants. Learned counsel submits that the factual foundation for

an offence has been laid down against the applicants and as such, there is substantial compliance with the requirements of the offence.

Learned counsel for respondent No.2, in order to substantiate his contentions, placed reliance on the judgment of the Supreme Court in the case of ***Taramani Parakh vs. State of Madhya Pradesh and others, reported in (2015) 11 SCC 260.***

6. We have also heard learned A.P.P. for respondent No.1 State.

7. We have carefully gone through the allegations made in the complaint so also the charge sheet. Though we find that the names of the applicants are mentioned in the F.I.R., however, it appears that the allegations have been made mainly against co-accused 1 to 4 i.e. 1) Deepak Kishor Ahuja, 2) Kishor Rupchand Ahuja, 3) Meena Kishor Ahuja and 4) Ravi Kishor Ahuja, whose application seeking quashing of F.I.R. and the criminal proceeding came to be withdrawn today. The applicant No.5 is the wife of brother-in-law of respondent No.2. Though her name is mentioned in the F.I.R. and one incident dated 28.7.2019 is quoted as against her, however, those allegations by referring her name appear to be absurd. Applicant No.6 Sakhubai, who is 70 years of age, is sister of father-in-law of respondent No.2. Except her name in the F.I.R. we do not find any specific allegations against her. Similarly, though name of applicant No.7 Vijay, who happened to be a distant relative, is mentioned in the F.I.R.,

however, we do not find any specific allegations against him. It appears to be the case of over-implication. Almost all family members have been implicated in connection with the present crime.

8. In the case of ***Taramani Parakh vs. State of Madhya Pradesh and others, (supra)***, relied upon by learned counsel for respondent No.2, the Supreme court in para 10, 14 and 15 has made the following observations:-

“10. The law relating to quashing is well settled. If the allegations are absurd or do not made 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. We may refer to the decisions of this Court dealing with the issue.

14. From a reading of the complaint, it cannot be held that even if the allegations are taken as proved no case is made out. There are allegations against Respondent No.2 and his parents for harassing the complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the appellant has in fact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible.

15. The decisions referred to in the judgment of the High Court are distinguishable. In Neelu Chopra, the parents of the husband were too old. The husband Rajesh had died and main allegations were only against him. This Court found no cogent material against other accused. In Manoj Mahavir, the appellant before this Court was the brother of the daughter-in-law of the accused who lodged the case against the accused for theft of jewellery during pendency of earlier Section 498A case. This Court found the said case to be absurd. In Geeta Mehrotra, case was against brother and sister of the husband. Divorce had taken place between the parties. The said cases neither purport to nor can be read as laying down any inflexible rule beyond the principles of quashing which have been mentioned above and applied to the facts of the cases therein which are distinguishable. In the present case the factual matrix is different from the said cases. Applying the settled principles, it cannot be held that there is no triable case against the accused.”

9. In para 10 of the said case, the Supreme Court has also observed that 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. So far the applicants before us are concerned, we are of the opinion that there is no triable case against them. The Supreme Court in the same para has further observed that 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.

10. Thus, considering entire aspect and the facts of the present case, in our opinion, no triable case is made out against the applicants. Thus, the F.I.R. and criminal proceedings are liable to be quashed and set aside to the extent of applicant Nos. 5 to 7. Hence, we proceed to pass the following order:-

O R D E R

- A) Criminal application is allowed in terms of prayer clause "A" to the extent of applicant Nos. 5) Simran @ Soni Ravi Ahuja, 6) Sakhubai @ Shakuntala Rameshlal Pherwani and 7) Vijay Ramchandra Nichani.
- B) Criminal applications is disposed of accordingly.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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