

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

943 CRIMINAL APPLICATION NO. 455 OF 2020

DEEPAK BHAGWAT GOHIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Mr. A.S. Savale, Advocate for applicants
Mr. S.J. Salgare, APP for respondent – State
Mr. V.B. Patil, Advocate for respondent no. 2
...

**CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 24TH NOVEMBER 2021

ORAL ORDER :

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 – Deepak Bhagwat Gohil (husband of respondent no. 2).
2. Application of applicant no. 1 – Deepak Bhagwat Gohil is hereby dismissed as withdrawn.
3. Applicants – original accused are seeking quashing of the FIR no. 366 of 2019 dated 09-09-2019 registered with Pundlik Nagar Police Station, Aurangabad for the offences punishable under section 498-A, 323, 504 r/w. 34 of the Indian Penal Code and also the criminal proceedings bearing Criminal Case no. 2984 of 2019 pending before the learned Judicial Magistrate First Class, Aurangabad.

4. Learned counsel for the applicants submits that the co-accused – Deepak and the respondent no. 2 have performed the marriage in the year 2017. It was the second marriage of both of them. The co-accused – Deepak is having one daughter from his first marriage, whereas respondent no. 2 is also having a son from her previous marriage. Learned counsel submits that in the year 2018, co-accused – Deepak had lodged the complaint against the respondent no. 2 in the Chandan Nagar Police Station, District – Pune, alleging therein that the son of the respondent no.2 from her first marriage had misbehaved with the daughter of the co-accused - Deepak. Further, in connection with the same, the respondent no. 2 has prepared one video by interacting with the minor daughter of the co-accused – Deepak.

5. We are not recording the details of the said misbehaviour in this order, considering the age of the minor children of both the parties.

6. Learned counsel for the applicants submits that thus, the relations between the co-accused – Deepak and the respondent no. 2 became strained and in consequence thereof, for wreaking vengeance against the co-accused – Deepak and his family members, respondent no. 2 has lodged the present complaint belatedly.

7. Learned counsel for applicants submits that the allegations have been made mainly against co-accused – Deepak (husband of respondent no. 2), whose application seeking quashing of the

proceeding came to be withdrawn today. So far as the applicants no. 2 and 3 are concerned, they are the aged father-in-law and mother-in-law of respondent no. 2. Applicant no. 2 – Bhagwat is 76 years of age at present and he is a retired person on pension and applicant no. 3 is the mother-in-law, 69 years of age at present. Though, their names are mentioned in the FIR, however, the allegations as against them are general in nature and no specific role has been levelled against them even during the course of investigation. Learned counsel submits that it is a case of over-implication.

8. Learned counsel for the respondent no. 2 submits that though the co-accused – Deepak has lodged the complaint in the year 2018 in Chandan Nagar Police Station, Pune against the respondent no.2 and even though the respondent no. 2 was called in the Police Station twice for making an enquiry in connection with the said crime, however, no crime has been registered against her. Learned counsel submits that the co-accused – Deepak has demanded an amount of Rs.10,00,000/- for purchasing the house and the respondent no. 2 was subjected to cruelty on account of non-fulfilment of the said demand. Learned counsel submits that the names of the present applicants are mentioned in the complaint with specific allegations against each of them. There is a specific role attributed to each of them and the applicants no. 2 and 3 have joined hands with the co-accused – Deepak in demanding the amount and further subjected the respondent no.2 to cruelty on account of the non-fulfilment of the said demand.

9. We have also heard the learned APP for the respondent – State.

10. We have carefully gone through the allegations made in the complaint so also the chargesheet. It appears that the relations between the parties, particularly, the applicant no. 1/co-accused – Deepak and his wife – respondent no. 2 have been strained to a considerable extent, however, the allegations have been made mainly against the co-accused – Deepak (husband of respondent no.2), whose application seeking quashing of the proceedings came to be withdrawn today. Though, we find the names of the present applicants no. 2 and 3 are mentioned in the FIR, however, the allegations as against them are general in nature without quoting any specific incident as such. Applicants no. 2 and 3 are aged persons.

11. In the case of ***Taramani Parakh Vs. State of Madhya Pradesh and others***, reported in **(2015) 11 SCC 260**, in para 10, 14 and 15 the Supreme Court 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.”

12. It is well settled that if the allegations are absurd and do not make out any case, the proceedings can be quashed. In the instant case, from the reading of the complaint, and even after going through the entire chargesheet, it cannot be held that even if the allegations are

taken as proved as against these two applicants, no case is made out. In matrimonial cases, the Courts have to be cautious when omnibus allegations are made. It is a case of over-implication. The relations between the respondent no. 2 and co-accused - Deepak have been strained considerably because of their children from their first marriage, respectively. In view of the same, so far as the present applicants no. 2 and 3 are concerned, it appears that the allegations as against them is the outcome of the strained relations between co-accused and the respondent no. 2.

13. In view of the above, and in terms of the law laid down by the Supreme Court in the case cited above, we proceed to pass the following order :

ORDER

I) Criminal Application is hereby allowed in terms of prayer clause (B) to the extent of the applicant no. 2 – Bhagwat Gohil and applicant no. 3 – Suman Bhagwat Gohil.

II) Criminal Application is accordingly disposed of.

[SANDIPKUMAR C. MORE, J.]

[V.K. JADHAV, J.]

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