

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

944 CRIMINAL APPLICATION NO. 360 OF 2021

1. Shaikh Laeek S/o Shaikh Rafik
@ Shaikh Ahmed Laeeque
Age 45 years, Occu : auto rickshaw driver
R/o MHB Colony, House No.109,
Near Champa Masjid, Roshan Gate Road
Aurangabad, Taluka and District Aurangabad.
2. Kausarbegum W/o Shaikh Rafik
@ Kausar Begum Mohammad Rafik
Age 67 years, Occu : Household
R/o MHB Colony, House No. 109,
Near Champa Masjid, Roshan Gate Road
Aurangabad, Taluka and District Aurangabad.
3. Shaikh Raees Shaikh Rafik
@ Shaikh Raees Ahmed Mohammad Rafique
Age : 35 years, Occu : private meter reader
R/o MHB Colony, House No. 109,
Near Champa Masjid, Roshan Gate Road
Aurangabad, Taluka and District Aurangabad.
4. Shaikh Nisar Shaikh Ayub
@ Shaikh Nisar Ahmed Shaikh Ayyub
Age 54 years, Occu : truck driver
R/o Lane no. 5, Near Abubakar Masjid,
Heena Nagar, Rashidpura, Aurangabad,
Taluka and District Aurangabad.
5. Rukayya W/o Najer Khan
@ Khan Ruqiya Khatun Nazeer Shaha Khan
Age 57 years, Occu : Household,
R/o House No. 2-3-100/372, Shah Bazar,
Near Budhh Vihar, Aurangabad,
Taluka and District Aurangabad.

6. Manna Begum W/o Ismail Momin
@ Shamim Ismail Momin
Age : 74 years, Occu : Household,
R/o Near Kohinoor Colony, 2/12/12
Moghulpura, Panchakki Road,
Aurangabad, Taluka and District Aurangabad.
7. Umer Kureshi S/o Gulab Kureshi
@ Shaikh Umer Shaikh Gulam
Age 62 years, Occu : Business,
R/o Flat No. 4, Metro Tower, Shah Bazar,
Aurangabad, Taluka and District Aurangabad. ... Applicants
(Accused)

Versus

1. The State of Maharashtra
2. Shahana Fatema W/o Shaikh Laeek
Age 27 years, Occu : Household,
R/o C/o Jafar Khan Amarderaaj Khan
Sarafa Lane, Badi Raj Galli, Dhondi Pura,
Beed, Taluka and District Beed. ... Respondents

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Advocate for Applicants : Mr. Hrishikesh V. Tungar
APP for Respondent No.1-State : Mrs. P. V. Diggikar
Advocate for Respondent No.2 : Mr. A. D. Kulkarni

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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 26th AUGUST, 2021**

PER COURT :-

1. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant nos.(1) Shaikh Laeek s/o Shaikh Rafik @ Shaikh Ahmed Laeeque, (2) Kausarbegum w/o

Shaikh Rafik @ Kausar Begum Mohammad Rafik and (3) Shaikh Raees Shaikh Rafik @ Shaikh Raees Ahmed Mohammad Rafique.

2. Leave granted. The application to the extent of applicant nos. 1 to 3 (original accused nos. 1 to 3) is hereby dismissed as withdrawn.

3. Heard finally with consent at admission stage.

4. Learned counsel for the applicants submits that names of the applicants are mentioned in the FIR, however, no specific role has been attributed to them. Even there are no general allegations against them. Learned counsel submits that though charge-sheet was filed in the year 2019, however, till the year 2021 the notices were not served on the applicants. Learned counsel submits that the applicants are the distant relatives residing at different areas of Aurangabad city. Learned counsel submits that with some ulterior motive, to wreak vengeance, respondent no.2-informant has implicated all the family members as accused persons in connection with the crime. Applicant no.4 is the cousin of co-accused husband. Applicant no.5 is the grandmother of the niece-in-law of co-accused

husband. Applicant no. 6 is the aunt of co-accused husband. Applicant no.7 is a friend not related to the family of the applicants.

5. Learned counsel for respondent no.2 submits that names of the applicants are mentioned in the FIR and they have instigated co-accused persons to harass respondent no.2.

6. We have also heard learned APP for the respondent State.

7. 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.”

8. 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.”

9. 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 compliant, 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.”

10. 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.”

11. In the instant case, though names of the applicants are mentioned in the FIR, there are no allegations against them. They are the distant relatives. They have been implicated in connection with the crime with some ulterior motive. Applicant no. 6 is 74 years of age and applicant nos. 4, 5 and 7 are above the age of 54 or 55 years. Applicant no. 7 is not even related to the family of the applicants. Further, nothing has been revealed during investigation as to their role in connection with the crime. Even no specific incident has been quoted as to when these applicants

allegedly instigated the other co-accused persons to harass respondent no.2-informant.

12. Thus, considering the entire aspect of the case and in view of the ratio laid down by the Supreme Court in the aforesaid cases, we proceed to pass the following order.

ORDER

The Criminal Application to the extent of applicant nos. 4 to 7 is allowed in terms of prayer clause (B) and disposed off accordingly.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)