

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

37 CRIMINAL APPLICATION NO.435 OF 2021

SUREKHA PRABHU KAMBLE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants: Mr. D. Ingole h/f N S Ghanekar
APP for Respondent 1: Mr. M M Nerlikar
Advocate for Respondent 2 : Mr. Dagadkhair D.K.

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.
Dated: November 29, 2021

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PER COURT :-

1. Heard finally with consent of parties, at admission stage.
2. The applicants/original accused are seeking quashing of the FIR in Crime No.12 of 2021 registered with Khultabad Police Station, District Aurangabad for the offence punishable under sections 498-A, 323, 504, 506, 34 of the Indian Penal Code. By order dated 2.3.2021 this Court has directed the Investigating officer to proceed with the investigation in connection with the crime but shall not submit the charge-sheet against the applicants till the next date of hearing and said interim order remained continued till today. It thus appears
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that though investigation is completed, charge-sheet as against these applicants is not filed.

3. Learned counsel submits that the applicants are the married sisters-in-law. The learned counsel submits that the allegations have been made mainly against co-accused husband and mother-in-law, who are not the applicants before this Court. So far as the applicants before the Court are concerned, allegations as against them are general in nature, without quoting any specific incident. Learned counsel submits that, these applicants got married long back and they are residing with their respective husband in Aurangabad. It is a case of over implication, since all the family members have been implicated in connection with the present crime.

4. Learned counsel for respondent no.2 submits that, names of the applicants are mentioned in the FIR with the specific role attributed to them. It has been specifically alleged in the complaint that the applicants herein when they come to their parents house, they used to instigate co-accused/husband against

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respondent no.2 for various reasons. So far as the applicant no.2 is concerned, she has instigated co-accused husband for the reason that respondent no.2 has delivered a female child instead of a male child. Further, respondent no.2 was also subjected to cruelty on the count that the parents of the respondent no.2 had given less amount of dowry at the time of marriage. Learned counsel submits that there is a triable case against the applicants. There is no substance in this application and the application is liable to be dismissed.

5. We have also heard the learned APP for the respondent no.1-State.

6. We have carefully gone through the contents of the FIR and also perused the police papers. Though, we find names of the applicants are mentioned in the FIR, however, allegations as against them are general in nature, without quoting any specific incident. The applicants are the married sisters-in-law residing at Aurangabad with their respective husband. It is not clear from the allegations made in the complaint nor from the investigation papers as to when these

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applicants had been to their parents house and instigated co-accused husband in the manner as alleged in the complaint. It is a classic example of over implication since almost all the family members have been implicated in connection with the present crime including the married sisters of co-accused husband. It further appears from the contents of the complaint that allegations have been made mainly against co-accused husband and mother-in-law. However, they are not before us as the applicants.

7. In the case of ***Geeta Mehrotra and others vs. 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

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scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

8. In the case of ***Neelu Chopra and others v. Bharti***, reported in 2010 CrLJ 448, the Supreme Court has observed that, “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. The complaint in the instant case 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

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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”.

9. 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 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. We may refer to the decisions of this Court dealing with the issue.

11. to 13.

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 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.

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15. The decisions referred to in the judgment of the High Court are distinguishable. In **Neelu Chopra v. Bharti, (2009) 10 SCC 184**, 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 the other accused. In **Manoj Mahavir Prasad Khaitan v. Ram Gopal Poddar, (2010) 10 SCC 673** 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 498-A IPC case. This Court found the said to be absurd. In **Geeta Mehrotra v. State of U.P. (2012) 10 SCC 741**, 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.”

10. It is well settled that, if the allegations are absurd in nature and do not make out any case, the proceedings can be quashed. In the instant case, from reading of the complaint and even after going through the investigation papers, even if the allegations as against the applicants are taken as proved, no case is made out. There is no triable case against the applicants. In this backdrop, continuation of the proceedings in terms of the allegations made in the FIR

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as against the applicants would amount to abuse of the Court process.

11. In view of the above and in terms of the ratio laid down by the Supreme Court in the aforesaid cases, we proceed to pass the following order.

ORDER

1. Criminal Application is hereby allowed in terms of prayer Clause "B" as against the present applicants only.
2. Criminal Application accordingly disposed off.

(SANDIPKUMAR C. MORE, J.) (V.K. JADHAV, J.)

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