

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

CRIMINAL APPLICATION NO. 583 OF 2021

Rahul Madhav Phate & Ors.

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

.....
Shri. Nitin S. Ingle, Advocate for the applicant
Shri. M. M. Nerlikar, APP for respondent/State
Ms Priyanka P. Shinde, Advocate (appointed) for respondent no. 2
.....

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

DATE : DECEMBER 21, 2021

ORAL ORDER: -

1. We have heard Shri. Nitin S. Ingle, learned Counsel for the applicant for sometime.

2. Learned Counsel for the applicant seeks, on instructions, leave to withdraw the instant application to the extent of applicant nos. 1 to 3.

3. Leave granted. The instant application to the extent of applicant no. 1-Rahul Madhav Phate (husband of R-2), applicant

no.2- Madhavrao Phate (father-in-law of R-2) and applicant no.3- Sunita Phate (mother-in-law of R-2), stands disposed of as withdrawn.

4. Applicant nos. 4 and 5 are seeking quashing of the FIR bearing Crime No. 5856/2020 registered with Kotwali Police Station, Dist. Ahmednagar, for the offences punishable under Sections 323, 498A, 504, 506 r/w 34 of the Indian Penal Code and the proceedings arising therefrom.

5. Learned Counsel for the applicants submits that though the names of the applicants are mentioned in the FIR, the allegations levelled against them are general in nature without attributing role against each of them or without quoting any specific incident. The learned Counsel submits that applicant nos. 4 and 5 are married sisters-in-law residing with their respective husband at different places. Applicant no. 4 is residing in Germany along with her husband and applicant no. 5 is working as Assistant Teacher in Raigad district. Learned Counsel for the applicants submits that it is the case of over implication.

6. Learned Counsel for respondent no. 2 submits that the names of the applicants are mentioned in the FIR with specific role

attributed to each of them. Respondent no. 2 was subjected to ill-treatment on account of non-fulfillment of the demand of the amount. There is no substance in this criminal application and same is liable to be dismissed.

7. We have also heard learned APP for State.

8. We have carefully gone through the allegations made in the complaint so also police papers.

9. Though we find the names of the applicants mentioned in the FIR, the allegations levelled are general in nature without attributing any specific role against each of them or without quoting any specific incident. It further appears that the allegations have been made mainly against husband, co-accused father-in-law and mother-in-law, whose application seeking quashing of the proceedings came to be withdrawn today by learned Counsel for the applicants. Applicants no. 4 and 5 are residing at different places. It is a classic example of over implication.

10. 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 “the 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 vs. Bharti*, reported in 2010 Cr.L.J. 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 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 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.

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.”

13. It is well settled that if the allegations are absurd in nature and if no case is made out, the proceedings are liable to be

quashed. In the instant case, even if the allegations as against the applicants are held to be proved, no case is made out. It is a clear case of over implication. Applicant nos. 4 and 5 are married sisters-in-law of respondent no. 2 and reside at different places. Thus, in view of the above and in terms of the law laid down by the Hon'ble Apex Court in the cases of Geeta Mehrotra, Neelu Chopra and Taramani Parakh (supra), we proceed to pass the following order.

ORDER

- [i] Criminal Application No. 583 of 2021 is allowed in terms of prayer clauses 'C' and 'D' thereof.
 - [ii] The fees of Ms Priyanka P. Shinde, learned Counsel appointed to represent respondent no. 2, is quantified at Rs. 2,000/- (Rupees Two Thousand) to be paid by the High Court Legal Aid Services, Sub-Committee, Aurangabad.
14. Criminal Application stands disposed of accordingly.

[SANDIPKUMAR C. MORE]
JUDGE

[V. K. JADHAV]
JUDGE