

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

36 CRIMINAL APPLICATION NO.780 OF 2020

NITIN S/O. SHIVAJI KAMBLE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicants : Mr. Gajanan G. Kadam
APP for Respondent-State: Mr. M. M. Nerlikar
Advocate for Respondent No.2 : Mr. Santosh B Bhosale
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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 3. Leave granted. The application of applicant Nos.1) Nitin Shivaji Kamble, 2) Shivaji Mahadu Kamble and 3) Vimal Shivaji Kamble is dismissed as withdrawn.

3. This application is filed for quashing of F.I.R. No. 0029 of 2020 registered with Ambejogai (City) police station, district Beed for the offences punishable under Sections 498-A, 323, 504 r.w. 34 of I.P.C. At present, the investigation is over and the charge sheet has been submitted. The case is now registered as R.C.C. No. 114 of 2020. Thus, the applicants are seeking quashing of F.I.R. so also the

criminal proceedings.

4. Learned counsel for the applicants submits that the allegations have been made mainly against co-accused, husband, mother-in-law and father-in-law, whose application seeking quashing of F.I.R. and the criminal proceeding came to be withdrawn. Learned counsel submits that though the names of applicants are mentioned in the F.I.R. the allegations are general in nature and no specific allegations have been made against them. Learned counsel submits that respondent No.2 informant was residing with co-accused husband at Pune. The applicant No.4, who is bother-in-law, serving as Junior Clerk in the court at Pali, District Raigad alongwith his wife applicant No.7 Shilpa. Though applicant No.5 Sachin alongwith wife applicant No.8 Diksha reside at Ambejogi, district Beed, however, they reside separately. The applicant No.6 Amol is in private service and resides at Pune. Learned counsel submits that it is case of over implication.

5. Learned counsel for respondent No.2 informant submits that the names of all applicants are mentioned in the F.I.R. with specific allegations against each of them. As per the allegations made in the complaint and it has been also revealed during the course of investigation that these applicants use to instigate the co-accused husband to make a demand of Rs.5,00,000/- for purchase of four wheeler and respondent No.2 informant was subjected to ill-treatment on account of non fulfillment of the said demand.

Learned counsel for respondent No.2, in order to substantiate his contentions, placed reliance on the judgment of 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 the names of these applicants are mentioned in the F.I.R. however, the allegations as against them are general in nature without quoting any specific incident as such. It further appears that the allegations have been made mainly against co-accused husband, mother-in-law and father-in-law, whose application seeking quashing of F.I.R. and the criminal proceedings came to be withdrawn today.

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 the instant case, considering the allegations made in the complaint so also as revealed during the course of investigation that the allegations as against the applicants are absurd in nature and do not make out any case. It is case of over implication and almost all family members have been implicated as accused persons in connection with the present crime.

10. Thus, considering the entire aspect of the case, we are inclined to quash the F.I.R. and the criminal proceeding against the applicants herein. Hence, we proceed to pass the following order:-

O R D E R

- A) Criminal application is allowed in terms of prayer clause "C" and "C-1" to the extent of applicant Nos. 4) Sharad Shivaji Kamble, 5) Sachin Shivaji Kamble, 6) Amol Shivaji Kamble, 7) Shilpa Sharad Kamble and 8) Diksha Sachin Kamble.
- B) Criminal applications is disposed of accordingly.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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