

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

48 CRIMINAL APPLICATION NO.640 OF 2021

SALEEM ABDUL REHMAN SHAIKH AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Jaiswal Nikhil D.
APP for Respondents: Mr. M M Nerlikar
Advocate for Respondent 2 : Mr. Shaikh Tarek Mobin

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

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PER COURT :-

1. Leave to correct the prayer clause to the extent of RCC number.

2. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant no.1-Saleem Abdul Rehman Shaikh and applicant no.3-Rabbani Abdul Raheman Shaikh. Application of applicant no.1-Saleem Abdul Rehman Shaikh and applicant no.3-Rabbani Abdul Raheman Shaikh is hereby dismissed as withdrawn.

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3. Heard finally with consent of parties at admission stage.

4. The applicants are seeking quashing of the FIR bearing crime No.21 of 2021 registered with Majalgaon Gramin Police Station, Tq. Majalgaon, District Beed for the offence punishable under sections 498-A, 323, 504, 506, 34 of IPC. The applicants are also seeking quashing of the criminal proceedings vide RCC No.35 of 2021.

5. The learned counsel for the applicants submits that though names of the applicants are mentioned in the FIR, however, allegations as against them are general in nature, without attributing any specific role to each of them. Learned counsel submits that the allegations so far have been made mainly against co-accused husband Saleem and unmarried sister-in-law co-accused Rabbani, whose application seeking quashing of the FIR and proceedings came to be withdrawn today. Learned counsel submits that applicant no.4-Abdul Rehman Babamiya Shaikh, who is
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father-in-law is suffering from Physical Deformity. Said deformity is to the extent of 50%. He is almost bedridden. Learned counsel for the applicant has pointed out from the allegations made in the complaint that it has merely stated in the complaint that the applicant no.2 Shaikh Bismilabee Abdul Raheman (mother-in-law) and applicant no.4-4 Abdul Raheman Babamiya Shaikh (father-in-law) of respondent no.2 used to ask respondent no.2 to press their legs.

6. Learned counsel for respondent no.2 submits that names of applicants are mentioned in the FIR with the specific role attributed to each of them. There are specific allegations about demand of Rs.5.00 Lacs by all the accused persons and even on 5.7.2019 parents of respondent no.2 have partly complied with the said demand by giving Rs.2.00 Lacs in cash. However, even thereafter, respondent no.2 was subjected to cruelty on account of the non-compliance of a new demand of Rs.5.00 Lacs for purchasing a new Scorpio vehicle. She was finally driven out from the house on 15.8.2020 and,

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since then, respondent no.2 is residing with her parents. There is a triable case against the applicants. There is no substance in this application. Application is liable to be dismissed.

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

8. We have carefully gone through the contents of the complaint, so also the charge-sheet.

9. So far as the applicants before us are concerned, though their names are mentioned in the FIR, however, the allegations against them are general in nature without quoting any specific incident. It has been merely stated in the complaint that they used to ask respondent no.2 to press their legs. It further appears that allegations have been made mainly against co-accused husband and co-accused unmarried sister-in-law, whose application seeking quashing of the FIR and criminal proceedings came to be withdrawn today. It appears to be a case of over implication.

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10. In a 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 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 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

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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 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”.

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 :-

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“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.

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.”

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

In the instant case, even if allegations as against the applicants are held to be proved, no case is made out against them. There is no triable case against them.

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

ORDER

- I. Criminal application is allowed in terms of prayer clause ‘**B**’.
- ii. Criminal application is accordingly disposed off.

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

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