

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

951 CRIMINAL APPLICATION NO.786 OF 2021

SHRIKANT RAOSAHEB PHUKE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Dhawale Bhushan S
APP for Respondents : Mr. M M Nerlikar
Advocate for Respondent 2 : Mr. Shrikant G. Kawade

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

Dated: December 16, 2021

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PER COURT :-

1. We have heard the learned counsel for the applicants for some time.

2. The learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant nos.1 to 3 with liberty to them to file an application for discharge before the trial court. Leave granted. Application of applicant no.1-Shrikant s/o Raosaheb Phuke (husband of respondent no.2), 2-Raosaheb Bhikanrao Phuke (father-in-law of respondent no.2) and 3-Devyani Raosaheb Phuke (mother-in-law of respondent No.2) is dismissed as withdrawn with liberty

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to them to file an application for discharge before the trial court.

3. The applicants/accused are seeking quashing of the FIR bearing crime no.40 of 2021 registered with Chaklamba police station, Tq Gevrai, District Beed for the offence punishable u/s 498-A, 323, 506 r/w 34 of the IPC and also the criminal proceedings vide RCC No.116 of 2021 pending before the J.M.F.C., Georai, District Beed.

4. Learned counsel for the applicants submits that, though names of the applicants are mentioned in the FIR, however, the allegations as against them are general in nature, without quoting any specific incident as such. Learned counsel submits that the applicant no.4 is cousin father-in-law, applicant no.5 is married sister-in-law, applicant no.6 is brother-in-law, applicant no.7 is cousin father-in-law, applicant no.8 is cousin mother-in-law. Learned counsel submits that it is a case of over implication, since almost all the family members have been implicated in connection with the

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present crime. Learned counsel submits that allegations to some extent which are also general in nature mainly made against co-accused father-in-law and mother-in-law, whose application seeking quashing of the proceedings came to be withdrawn today with liberty to them to file an application for discharge before the trial court in a pending case.

5. Learned counsel for respondent no.2 submits that names of the applicants are mentioned in the FIR with the specific role attributed to each of them. Respondent no.2 was subjected to ill-treatment on account of non-fulfilment of demand of Rs.5 lacs for purchasing four wheeler vehicle and she was finally driven out from the house on account of non-fulfillment of the said demand. She was also threatened about performing of the second marriage of co-accused husband. Learned counsel submits that there is no substance in this criminal application. The same is liable to be dismissed.

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

7. We have carefully gone through the allegations made in the complaint, so also the charge-sheet. Though, we find names of the applicants are mentioned in the FIR, however, allegations against them are general in nature, without attributing any specific individual role to each of them. The applicant nos.4,7 and 8 are the distant relatives, even then, they have been implicated in connection with the present crime. Furthermore, applicant no.5 is a married sister-in-law residing in Taluka Paithan, District Aurangabad alongwith her husband at her matrimonial home. It is a case of over implication.

8. 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
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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 Vs. 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

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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 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.

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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.”

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

12. In the instant case, even if the allegations as made as against the applicants are held to be proved, no triable case is made out against them. It is a classic example of over implication.

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

ORDER

1. Criminal Application is hereby allowed in terms of prayer Clause **“B” and C-1** as against the applicants.
2. Criminal Application accordingly disposed off.

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

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