

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

CRIMINAL APPLICATION NO. 885 OF 2021

01 Kailas s/o Madhukar Chaudhari

02 Indubai w/o Madhukar Chaudhari

03 Vilas s/o Madhukar Chaudhari

04 Sau. Meena w/o Vilas Chaudhari

05 Ashwini w/o Sandeep Kale

06 Sandeep s/o Subhash Kale

Applicants

Versus

01 The State of Maharashtra

02 Mohini w/o Kailas Chaudhari

Respondents

Mr. Amol S. Sawant, advocate for the applicants
Mr. S. J. Salgare, APP for Respondent No.1-State.
Mr. V. B. Patil, advocate for Respondent No.2.

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

DATE : 25th November, 2021.

PC :

1 By consent, application is heard finally at the stage of admission.

2 We have heard learned Counsel for the applicants for

some time. Learned Counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant no.2 – Indubai w/o Madhukar Chaudhari and applicant no. 3 -Vilas s/o Madhukar Chaudhari. Leave granted. Application of applicant no.2 – Indubai w/o Madhukar Chaudhari and applicant no. 3 - Vilas s/o Madhukar Chaudhari is hereby dismissed as withdrawn.

3 Application of husband/applicant no.1 – Kailash Madhukar Chaudhari is already dismissed as withdrawn vide this Court's (Coram: V. K. Jadhav & S. G. Dige, JJ.) order dated 14th July, 2021.

4 Applicants are seeking quashing of the First Information Report in connection with Crime No.0050/2021, registered with M.I.D.C. Police Station, Jalgaon, for the offences punishable under Sections 498A, 323, 504 and 506 read with Section 34 of the Indian Penal Code and the criminal proceedings bearing RCC No.480/2021, pending before the Judicial Magistrate, First Class, Jalgaon.

5 Learned Counsel for the applicants submits that allegations against these applicants are general in nature, without

quoting any specific incident, as such. The learned Counsel submits that even if those allegations are considered as it is, the same are absurd in nature. The learned Counsel submits that applicant no.4 is the wife of applicant no.3, who is brother-in-law and applicant no.5 is the married sister-in-law residing at Badlapur along with her husband applicant no.6. The learned Counsel submits that almost all the family members, including married sisters and their husbands are involved in connection with the present crime .

6 Learned Counsel for Respondent No.2 submits that names of the applicants are mentioned in the First Information Report with specific role attributed against each of them. Respondent No.2 has referred these applicants in the First Information Report alleging that they have subjected her to cruelty on account of demand of 10 gms gold. The learned Counsel submits that there is no substance in the application and application is liable to be dismissed.

7 We have also heard learned A.P.P. for Respondent No.1-State.

8 We have carefully gone through the allegations in the complaint so also perused the charge sheet. Though we find names of these applicants are mentioned in the First Information Report, however, allegations are omnibus and even absurd in nature. This is a case of over implication since all the family members have been implicated in the crime.

9 In the case of *Gita 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 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.”

10 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 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”.

11 In the case of *Taramani Parakh v. State of Madhya Pradesh and others*, reported in (2015) 11 SCC 260, in para 10 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 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.”*

12 It is well settled that if the allegations are absurd in nature and no case is made out, criminal proceedings are liable to be quashed. The allegations are mainly against co-accused – husband, mother-in-law and brother-in-law of Respondent No.2 i.e. applicants no.1 to 3, whose application seeking quashing of the proceedings came to be withdrawn. The allegations against applicants no. 4 to 6, if held to be proved, no case is made out.

13 In view of the above and in view of the ratio laid down by the Hon'ble Supreme Court in the aforesaid cases, we proceed to pass the following order:

(i) Criminal Application is allowed in terms of prayer clause "B" and "BB" to the extent of applicant no.4 – Meena Vilas Chaudhari, applicant no.5 – Ashwini w/o Sandeep Kale and applicant no.6 – Sandeep Subhash Kale.

14 Criminal Application is hereby disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

adb