

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

CRIMINAL APPLICATION NO. 903 OF 2021

01 Abdul Hafij s/o Abdul Sattar

02 Rajiya Begam w/o Abdul Sattar

03 Abdul Sattar s/o Shaikh Mahemood
Maniyar

04 Aaiyesha w/o Sayyed Rizwan

05 Shaikh Rafik s/o Shaikh Sattar
Kasar

06 Abdul Latif s/o Abdul Sattar Kasar

07 Abdul Shafee s/o Abdul Sattar Kasar Applicants

Versus

01 The State of Maharashtra

02 Rehana Begam w/o Abdul Hafij Respondents

Mr. S. N. Janakwade, advocate for the applicants
Mr. R. V. Dasalkar, APP for Respondent No.1-State.
Mr. Shaikh Wajeed Ahmed, advocate for Respondent No.2.

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

DATE : 25th November, 2021.

PC :

1 Leave to correct name of applicant no.4.

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

3 We have heard learned Counsel for applicants for sufficient time. The learned Counsel, on instructions, seeks leave to withdraw the application of applicant no.1- Abdul Hafij s/o Abdul Sattar, applicant no.2 – Rajiya Begam w/o Abdul Sattar, applicant no.3 – Abdul Sattar s/o Shaikh Mahemood Maniyar and applicant no.4 – Aaiyesha w/o Sayyed Rizwan. Leave granted. Application of applicant no.1- Abdul Hafij s/o Abdul Sattar, applicant no.2 – Rajiya Begam w/o Abdul Sattar, applicant no.3 – Abdul Sattar s/o Shaikh Mahemood Maniyar and applicant no.4 – Aaiyesha w/o Sayyed Rizwan, stands dismissed as withdrawn, with liberty to file an application for discharge before the trial Court.

4 The applicants – original accused are seeking quashing of the First Information Report bearing Crime No.24/2021, registered with Purna Police Station, Taluka Purna, District Parbhani, for the offences punishable under Sections 498A, 307, 323, 504 and 506 read with Section 34 of the Indian Penal Code. The applicants are also seeking quashing of the proceedings vide RCC No.80/2021, pending before the Judicial Magistrate, First

Class, Purna.

5 Learned Counsel for the applicants submits that allegations have been made mainly against co-accused husband, mother-in-law, father-in-law and sister-in-law Aaiyesha i.e. applicants no.1 to 4, whose application, seeking quashing of the First Information Report and criminal proceedings, came to be dismissed as withdrawn.

6 Learned Counsel submits that names of applicants no.5 to 7 are not mentioned in the First Information Report, however, in the supplementary statement recorded belatedly, for the first time, Respondent No.2 has made certain allegations against them. Learned Counsel submits that even if those allegations are considered as it is, the allegations are absurd and it has been merely alleged that for ten years, Respondent No.2 was subjected to cruelty by these persons along with co-accused persons. Learned Counsel submits that this is a case of over implication.

7 Learned Counsel for Respondent No.2 submits that Respondent No.2 has made allegations against applicants no.5 to 7

in her supplementary statement. Learned Counsel submits that Respondent No.2, on 02.02.2021, has complained to the Superintendent of Police, Parbhani, in writing and on the basis of the directions given by the Superintendent of Police, supplementary statement of Respondent No.2 came to be recorded and thus, applicants no. 5 to 7 came to be arraigned as accused persons in connection with the present crime. The learned Counsel submits that applicants no. 5 to 7 have also extended beating to Respondent No.2 and Respondent No.2 has sustained severe injuries in the said incident. Learned Counsel for Respondent No.2 has shown us certain photographs of Respondent No.2 to demonstrate that Respondent No.2 has sustained injuries in the said incident. The learned Counsel submits that there is a triable case against these applicants. There is no substance in the application and the same is liable to be rejected.

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

9 We have carefully gone through the contents of the complaint and also perused the charge sheet. It appears that names of the applicants are not mentioned in the First Information

Report, however, in the supplementary statement of Respondent No.2, recorded in the month of February 2021, for the first time, Respondent No.2 has made allegations against these applicants. We have carefully gone through the supplementary statement. The allegations as against these applicants are absurd in nature. Applicant no.5 – Shaikh Rafik, applicant no.6 – Abdul Latif and applicant no.7 – Abdul Shafee are brothers-in-law, aged 37, 35 and 29 years, respectively. Though, the learned Counsel has shown us the complaint filed by Respondent No. 2 with the Superintendent of Police, Parbhani, and even the supplementary statement of Respondent No.2 recorded in tune with the directions given by the Superintendent of Police, Parbhani, the supplementary statement is silent about the specific role played by these applicants. So far as charge under Section 307 of the Indian Penal Code is concerned, the allegations have been made mainly against co-accused husband, whose application came to be dismissed as withdrawn. Similarly, allegation about beating extended to Respondent No.2 on account of non fulfillment of certain demands, is against mother-in-law, father-in-law and sister-in-law Aaiyesha, whose application seeking quashing of the First Information Report and criminal proceedings came to be dismissed as withdrawn.

10 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.”

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 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 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."

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.

14 In the instant case, even if the allegations against applicants no.5 to 7 are held to be proved, no case is made out against them. There is no triable case against them. In view of the same, if the proceedings are permitted to be continued against applicants no.5 to 7, it would be an abuse of Court process.

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

(i) Criminal Application is allowed in terms of prayer clause "A" (amended) to the extent of Applicant no.5 – Shaikh Rafik s/o Shaikh Sattar Kasar, applicant no.6 – Abdul Latif s/o Abdul Sattar Kasar and applicant no.7 – Abdul Shafee s/o Abdul Sattar Kasar.

16 Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

adb