

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

945 CRIMINAL APPLICATION NO.1040 OF 2021

SHAIKH MANSUR HASAN SHAIKH AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. R. B. Deshpande
APP for Respondent no.1 State: Mr. R. V. Dasalkar
Advocate for Respondent no.2 : Mr. Taher Ali Quadri

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CORAM : V. K. JADHAV AND

SANDIPKUMAR C. MORE, JJ.

DATED : 23rd DECEMBER, 2021.

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ORDER :

1. By consent of the parties, heard finally at stage of admission.
2. The applicants / original accused, are seeking quashing of FIR bearing No. 49 of 2021, registered with City Chowk Police Station, Aurangabad for the offence punishable under sections 498-A, 323 and 504 read with 34 of IPC. During pendency of the application, charge sheet came to be filed. Thus, the applicants/ accused are also seeking quashing of the proceedings bearing RCC No.1702 of 2021, pending before Judicial Magistrate (First Class), Aurangabad.

3. Learned counsel for the applicants submits that there are no allegations against applicant nos. 5 and 6. Applicant no.2 is the mother-in-law and applicant no.3 is father-in-law. Though their names are mentioned in the complaint, however, the allegations as against them, are general in nature. Learned counsel submits that applicant no.4 is a married sister-in-law, residing at different place along with applicant no.5 and the allegations as against her, are absurd and vague.

4. Learned counsel submits that it is a case of over-implication and almost all the family members are implicated in connection with the crime.

5. Learned counsel for respondent no.2 submits that applicant nos.2, 3 along with co-accused husband, had demanded an amount of Rs.1,00,000/- for opening a shop and subjected respondent no.2 to cruelty on account of non-fulfillment of the said demand. Learned counsel submits that applicant no.4 even after her marriage, resides in her parents' house along with her husband because of her handicapped son from first husband. It has been specifically alleged in the complaint that applicant no.4 used to ill-treat respondent no.2 by saying that her son is available in the house and as such she is not required

to give birth to another baby. Learned counsel submits that there are specific allegations against respondent nos.2, 3 and 4. Learned counsel, however, fairly accepted that there are no allegations against applicant nos.5 and 6 in the complaint, on the basis of which the crime is registered. Learned counsel submits that along with affidavit in reply, respondent no.2 has filed a copy of the complaint. However, while recording her complaint, certain portion of her complaint was deleted. Learned counsel submits that in the complaint annexed to the affidavit in reply, there are allegations against applicant nos. 5 and 6 also. Learned counsel submits that there is no substance in this criminal application and same is liable to be dismissed.

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

7. We have carefully gone through the contents of the complaint and also perused the charge sheet. Though we find the names of the applicants mentioned in the complaint, however, so far as applicant no.5- Yasin Ismail Pathan and no.6 Ansar Hasan Shaikh are concerned, there are no allegations against them. So far as applicant no.2-Shabana w/o Hasan Shaikh (mother-in-law of respondent no.2) and applicant no.3- Hasan Ahmed Shaikh (father-in-law of respondent no.2) and

applicant no.4 - Ujma w/o Yasin Pathan (sister-in-law of respondent no.2) are concerned, there are specific allegations against them.

8. It has been alleged in the complaint that applicant nos. 2 and 3 along with co-accused husband, used to demand an amount of Rs.1,00,000/- from respondent no.2 to be fetched from her parents for opening a shop and she was subjected to ill-treatment on account of non-fulfillment of the said demand. They used to give threats to kill in case their demand is not fulfilled. So far as applicant no.4- Ujma (sister-in-law of respondent no.2) is concerned, there are also specific allegations against her that she used to ill-treat respondent no.2 for various reasons including the fact that respondent no.2 is likely to give birth to a baby. The applicant no.4 Ujma used to tell to respondent no.2 that her son is available in the house and she is not required to give birth to another baby. Applicant no.4 Ujma used to ill-treat her for the same by various modes. It has been specifically alleged that applicant no.4 Ujma was not allowing her to give her food and also not allowing her family members to give her medicines. Even applicant no.4 used to instigate co-accused husband for ill-treating respondent no.2.

9. 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 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 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.

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."

12. It is well settled that if the allegations are absurd in nature and no case is made out, the proceedings are liable to be quashed. In the instant case, there are allegations against applicant no.2- Shabana w/o Hasan Shaikh, no.3- Hasan Ahmed Shaikh and no.4- Ujma w/o Yasin Pathan, there is a triable case

against them. So far as applicant no.5- Yasin Ismail Pathan and no.6- Ansar Hasan Shaikh, are concerned, there are no allegations against them.

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

O R D E R

- I) Criminal application is hereby partly allowed in terms of prayer clause "C and CC" to the extent of applicant no.5 Yasin Ismail Pathan and no.6 Ansar Hasan Shaikh.
- II) Criminal application of applicant nos.2 Shabana w/o Hasan Shaikh, no.3- Hasan Ahmed Shaikh and no.4- Ujma w/o Yasin Pathan, is hereby dismissed.
- III) Criminal application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-