

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

CRIMINAL APPLICATION NO.1707 OF 2020

01 Amol Eknath Bagul

02 Kamalbai Eknath Bagul

03 Eknath Tukaram Bagul

04 Harshada Arun Wagh

05 Arun Sahebrao Wagh

06 Manisha Sanjay Vasaikar

07 Sanjay Kashinath Vasaikar

08 Anupama Kishor Bhamare

09 Roshani Amol Chavan

Applicants

Versus

01 The State of Maharashtra

02 Sau. Rajani Amol Bagul

Respondents

Mr. U. A. Bhadgaonkar, advocate for applicants

Mr. K. S. Patil, APP for Respondent No.1-State.

Mr. N. V. Borse, advocate with Mr. M. R. Wagh, 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 Applicants – original accused, in connection with Crime No. 292/2020, registered with Dhule Taluka Police Station, for the offences punishable under Sections 498A, 406, 323, 504 and 506 read with Section 34 of the Indian Penal Code, are seeking quashing of the First Information Report. During pendency of the application, charge sheet has been submitted. After carrying out the amendment, applicants-original accused are also seeking quashing of the Criminal Proceedings bearing RCC No.114/2021.

3 Learned Counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant no.1 – Amol Eknath Bagul, applicant no.2 – Kamalbai Eknath Bagul, applicant no.3 – Eknath Tukaram Bagul, applicant no.4 – Harshada Arun Wagh and applicant no.5 Arun Sahebrao Wagh.

4 In view of the same, leave is granted to withdraw the application of applicant no.1 – Amol Eknath Bagul, applicant no.2 – Kamalbai Eknath Bagul, applicant no.3 – Eknath Tukaram Bagul, applicant no.4 – Harshada Arun Wagh and applicant no.5 Arun Sahebrao Wagh. Accordingly, application, in respect of

applicants no.1 to 5 is hereby dismissed as withdrawn.

5 Learned Counsel for the applicants submits that though names of applicants no.6 – Manisha Sanjay Vasaikar, applicant no.7 – Sanjay Kashinath Vasaikar, applicant no.8 – Anupama Kishor Bhamare and applicant no.9 – Roshani Amol Chavan, are mentioned in the First Information Report, however, allegations against them are general in nature. Learned Counsel for the applicants pointed out that applicant no.6 – Manisha is the married sister-in-law of Respondent No.2 residing with her husband applicant no.7 – Sanjay at Dhule. Applicant no.8 – Anupama is also a married sister-in-law of Respondent No.2 residing with her husband at Chalisgaon and applicant no. 9 – Roshani is also a married sister-in-law of Respondent No.2 residing at Pune. Applicants no. 8 and 9 are in teaching profession. Learned Counsel for the applicants submits that it is a case of over implication.

6 Learned Counsel for Respondent No.2-informant submits that names of these applicants are mentioned in the First Information Report and specific role is attributed to each of the applicants. It has been specifically alleged in the complaint and it

has also been revealed during the course of investigation that these applicants instigated the co-accused persons to subject Respondent No.2 to cruelty.

7 We have also heard learned A.P.P. for the Respondent-State.

8 We have carefully gone through the contents of the complaint and also perused the charge sheet. It appears that allegations have been made mainly against co-accused i.e. husband, father-in-law, mother-in-law, sister-in-law – Harshada and her husband Arun, who are residing at Nasik in the same apartment. Their application seeking quashing of the proceedings came to be withdrawn.

9 Though names of applicants no.6 to 9 are mentioned in the First Information Report, the allegations as against them are general in nature without attributing any specific role as such. It is the case of over implication and almost all the family members of the husband have been implicated in the complaint. Applicant no. 6 – Manisha is the married sister-in-law, who resides at Dhule along with her husband applicant no.7 – Sanjay. Applicant no.8 –

Anupama is also a sister-in-law, who resides at Chalisgaon. Applicant no.9 – Roshani is also a sister-in-law residing at Pune. Applicants no. 8 and 9 are serving as teachers.

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 In the instant case, the allegations as against applicants no. 6 to 9 are absurd and it would be an abuse of process of law if the FIR and the Criminal proceedings are not quashed against them. From the reading of the complaint and after going through the charge sheet, even if the allegations are taken to be proved, no case is made out against applicants no. 6 to 9. There is no triable case as against these applicants. In view of the same, if the proceedings, as against applicants no. 6 to 9 are permitted to be continued, it will be an abuse of Court process.

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 "CC" to the extent of applicants no.6 to 9.

14 Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

adb