

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

941 CRIMINAL APPLICATION NO. 1867 OF 2020

SATTARSING S/O BONDARYA PAWARA AND OTHERS
VERSUS
STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mrs. R. L. Jakhade
APP for Respondent No.1-State : Mr. M. M. Nerlikar
Advocate for Respondent No.2 : Mr. Amit S. Salve

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CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 06th OCTOBER, 2021

PER COURT:-

1. Learned counsel for the applicants, on instructions, seeks leave to withdraw the applications of applicant nos. 1 to 3.
2. Leave granted. The application of applicant nos. 1. Sattarsing S/o Bondarya Pawara, 2. Bondarya S/o Kalshya Pawara and 3. Tarakibai W/o Bondarya Pawara is hereby dismissed as withdrawn.
3. Applicant nos. 4 to 9 are the accused persons in connection with crime no. 284 of 2020 registered with Dhadgaon Police Station, District Nandurbar for the offence punishable under

Sections 498-A, 323, 504, 506 r/w 34 of IPC. During pendency of this criminal application, charge-sheet has been submitted. The applicants have thus carried out amendment in the prayer clause with permission of the Court and prayed for quashing of the criminal proceedings also.

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 attributing any specific role. Learned counsel submits that applicant nos. 4, 5 and 7 are the brothers-in-law of respondent no.2. Applicant nos.4 and 5 are in service. Applicant no.5 is residing at Nandgaon, Taluka Nandgaon, District Nashik. Applicant No.7 Subhash is Doctor by occupation and he is practicing at Dhule and resides there along with his family. Learned counsel submits that applicant nos. 6, 8 and 9 are the married sisters-in-law. They are residing at their respective matrimonial homes at different places. Learned counsel submits that it is a case of over-implication and almost all the family members have been implicated in connection with the present crime.

5. Learned counsel for respondent no.2-informant submits that names of all the applicants are mentioned in the FIR with specific allegations against each of them. All the applicants allegedly subjected respondent no.2 to cruelty as defined under Section 498-A of IPC. Respondent no.2-informant was subjected to ill-treatment on account of non-fulfillment of a demand for purchasing a four-wheeler. Learned counsel submits that even on 20.09.2020 all the applicants along with co-accused persons had been to the house of parents of respondent no.2-informant and demanded the amount and further extended beating to the parents and other relatives of respondent no.2-informant on account of non-fulfillment of the said demand.

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

7. We have carefully gone through the allegations made in the complaint and also the copy of the charge-sheet. Though we find names of applicant nos. 4 to 9 mentioned in the FIR, however, the allegations are general in nature without quoting any specific

incident as such. The applicant nos. 6, 8 and 9 are the married sisters-in-law residing with their family members at different places. It is not clear from the allegations made in the complaint nor from the charge-sheet as to on what date, time and place they had been to their parents' house and subjected respondent no.2-informant to cruelty. So far as applicant nos. 4, 5 and 7, who are the brothers-in-law of respondent no.2-informant, are concerned, they are also either in service or in medical profession. The allegations as against them are absurd in nature without quoting any specific incident.

8. 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.”

9. 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”.

10. In the case of ***Taramani Parakh v. 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.”

11. It is well settled that if the allegations are absurd and do not make out any case, the proceedings can be quashed. In the instant case, omnibus allegations have been made, particularly against applicant nos. 4 to 9. There is no triable case against them. It appears that the allegations have been made mainly against co-accused husband, father-in-law and mother-in-law, whose application seeking quashing of the criminal proceedings came to be withdrawn today. Thus, considering the entire aspect of the case and in view of the ratio laid down by the Supreme Court in the aforesaid cases, we are inclined to quash the FIR and the criminal proceedings to the extent of applicant nos. 4 to 9. Hence, the following order

ORDER

I. The criminal application is hereby allowed in terms of prayer clauses “B” and “B-1” to the extent of applicant nos. 4. Mansing S/o Bondarya Pawara, 5. Uttam S/o Bondarya Pawara, 6. Sehali W/o

Uttam Pawara, 7. Subhash S/o Bondarya Pawara, 8. Vashibai W/o Dongarsing Pawara and 9. Shakuntala W/o Kailas Pawara.

II. The criminal application is accordingly disposed off.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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