

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928 CRIMINAL APPLICATION NO. 2114 OF 2019

RAJABHAU S/O. DAGDU @ BABAN GAVADE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Bobade Yogesh K.
APP for Respondent No.1-State: Mr. R. V. Dasalkar
Advocate for Respondent No.2 : Ms. Pournima Salve h/f
Mr. Sudarshan J. Salunke

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CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 10th DECEMBER, 2021

PER COURT:-

1. Heard finally with consent at admission stage.
2. The applicants-original accused are seeking quashing of the FIR bearing crime no. 165/2019 registered with Majalgaon City Police Station, Taluka Majalgaon, District Beed for the offence punishable under Sections 498-A, 504, 506, 323 r/w 34 of IPC and also the criminal proceedings bearing R.C.C. No. 189/2019 pending before the Judicial Magistrate, First Class, Majalgaon.
3. Learned counsel for the applicants submits that applicant no.1 is the brother-in-law and applicant no.2 is the aunt-in-law of respondent no.2 Learned counsel 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 individual role. It is a case of over-implication and almost all the family members have been implicated in connection with the present crime. Learned counsel submits that co-accused husband and father-in-law are not before the Court as applicants for seeking quashing of the proceedings.

4. Learned counsel for respondent no.2 submits that names of the applicants are mentioned in the FIR with a specific role attributed to each of them. Learned counsel submits that respondent no.2 was subjected to cruelty on account of non-fulfillment of a demand of Rupees two lakh for securing bank employment. There is a triable case against the applicants. There is no substance in the application and the same is liable to be dismissed.

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

6. We have carefully gone through the allegations made in the complaint and also perused the charge-sheet. It appears that the allegations as against the applicants are general in nature without attributing any specific individual role to each of them. There are

general allegations to the effect that the applicants and the co-accused have ill-treated respondent no.2 on account of non-fulfillment of the demand of Rupees two lakh for securing bank employment. Though there are allegations that respondent no.2 was subjected to beating and abuses and further she was driven out from the house, however, no date, time and place of the said incident has been stated in the complaint, nor it has been revealed during the course of the investigation, nor any specific role is attributed to these applicants. Applicant no.1 is the married brother-in-law residing with his family at Begumpura, Aurangabad. He is working as male nurse at Government Medical College and Hospital, Aurangabad. Applicant no.2 is the aunt-in-law. It is the case of over-implication and all the family members have been implicated in connection with the present crime.

7. 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.”

8. 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”.

9. 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.”

10. We have already discussed in the foregoing paras that the allegations as against the applicants are general in nature. Even if those allegations, which are general in nature, are held to be proved, no case is made out as against the applicants.

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

ORDER

I. The Criminal Application is hereby allowed in terms of prayer clauses “B” and “B-1”.

II. The Criminal Application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)