

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

CRIMINAL APPLICATION NO. 2072 OF 2020

01 Ambadas s/o Laxman Gavhane

02 Laxman s/o Appaji Gavhane

03 Janabai w/o Laxman Gavhane

04 Ankush s/o Laxman Gavhane

05 Chayya w/o Ankush Gavhane

06 Narayan @ Popat s/o Bapu Girhe

07 Kisan @ Kishor s/o Bapu Girhe

08 Saheba @ Bhanudas s/o Eknath
Gavhane

09 Karbhari s/o Eknath Gavhane

10 Vijay s/o Ramdas Gavhane

11 Bapu s/o Kondiram Girhe

12 Hirabai w/o Bapu Girhe.

Applicant

Versus

01 The State of Maharashtra

02 The Police Station In-charge,
Belwandi Police Station,
Tq. Shrigonda, Dist. Ahmednagar.

03 Kalyani w/o Ambadas Gavhane

Respondents

Mr. D. R. Markad, advocate holding for Mr. G.P. Darandale,
advocate for the applicants

Mr. K. S. Patil, APP for the Respondents No.1 & 2.

Mr. G. G. Kadam, advocate for Respondent No.3.

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

DATE : 09th December, 2021.

PC :

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

2 Learned Counsel for the applicants, on instructions, seeks leave to withdraw the application of applicants no. 1 to 3.

3 Leave granted. Application of applicant no.1- Ambadas, applicant no.2- Laxman and applicant no.3 – Janabai is hereby dismissed as withdrawn.

4 Learned Counsel for the applicants submits that except the incident allegedly taken place on 24.02.2020, though names of the applicants are mentioned in the First Information Report, no specific role is attributed to them. The learned Counsel submits that so far as the incident allegedly occurred on 24.02.2020 is concerned, the allegations have been mainly made against co-accused Ambadas, co-accused Laxman and co-accused Janabai, whose application, seeking quashing of the proceedings,

came to be withdrawn.

5 Learned Counsel for the applicants submits that applicant no.4 is the brother-in-law of applicant no.1 serving in the Army and as per the certificate issued by the Officer Commanding, he was on duty on 24.02.2020 at Ranjit Enclave, Bhatinda Cantonment. The learned Counsel submits that applicant no.5 is the wife of applicant no.4 and she is also residing with applicant no.4 and on the date of the incident, she was also along with her husband at Bhatinda Cantonment. The Commanding Officer has certified about her presence along with her husband – applicant no.4 at Bhatinda Cantonment on 24.02.2020. The learned Counsel submits that applicants no. 6 and 7 are the brothers of applicant no.5 and applicants no. 11 and 12 are parents of applicant no.5. Applicants no. 8, 9 and 10 are the cousin brothers-in-law of Respondent No.2. The learned Counsel submits that except their names are mentioned in the First Information Report, the allegations made as against them are general in nature. The learned Counsel submits that only one incident dated 24.02.2020 is alleged in the complaint and there are no allegations against these applicants that they have subjected Respondent No. 2 to cruelty, as defined under Section 498A of the Indian Penal

Code. The learned Counsel submits that it is a case of over implication.

6 Learned Counsel for Respondent No.2 submits that names of all the applicants are mentioned in the complaint and so far as the incident occurred on 24.02.2020 is concerned, a specific role is attributed to each of them. There is a triable case against these applicants. There is no substance in this application and the application is liable to be dismissed.

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

8 We have carefully gone through the contents of the complaint so also perused the charge sheet. Except the incident dated 24.02.2020, wherein allegations have been made mainly against applicants no. 1 to 3 i.e. co-accused husband, father-in-law and mother in-law of Respondent No.2, no specific role has been attributed to these applicants. Even in the incident dated 24.02.2020, no specific role has been attributed to each of the applicants. Applicants no. 8 to 10 are the cousin brothers-in-law of Respondent No.2. Applicants no. 11 and 12 are the parents of

applicant no.5. Applicants no.6 & 7 are the brothers of applicant no.5. Furthermore, applicants no. 4 and 5 were at Bhatinda cantonment, on 24.02.2020, as certified by the Commanding Officer. This is a classic example of over implication and almost all the family members have been implicated in connection with the present crime.

9 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.”

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 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.”*

12 It is well settled that if the allegations made in the complaint are accepted as it is and no case is made out against the applicants, the proceedings can be quashed. In the instant case, the allegations, as made against these applicants, even if are held to be proved, no case is made out. It is a case of over implication.

13 In view of the above and in terms of the ratio laid down by the Hon'ble Supreme Court in the afore-cited cases, we proceed

to pass the following order:

(i) Criminal Application is allowed in terms of prayer clause “B” to the extent of applicant no. 4 – Ankush s/o Laxman Gavhane, applicant no. 5 – Chayya w/o Ankush Gavhane, applicant no. 6 Narayan @ Popat s/o Bapu Girhe, applicant no. 7 Kisan @ Kishor s/o Bapu Girhe, applicant no.8 – Saheba @ Bhanudas s/o Eknath Gavhane, applicant no. 9 – Karbhari s/o Eknath Gavhane, applicant no. 10 – Vijay s/o Ramdas Gavhane, applicant no.11 Bapu s/o Kondiram Girhe and applicant no.12 – Hirabai w/o Bapu Girhe.

14 Criminal Application is disposed of accordingly.

(SANDIPKUMAR C. MORE)
JUDGE

(V. K. JADHAV)
JUDGE

adb