

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

941 CRIMINAL APPLICATION NO. 2342 OF 2019

1. SHAIKH ABDUL HAMID ABDUL GANI
2. ANISA BEGUM SHAIKH ABDUL HAMID
3. MOHAMMAD NOMAN SHAIKH ABDUL HAMID

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Bhosle Mahesh K.
APP for Respondent No.1-State : Mr. S. P. Deshmukh
Advocate for Respondent No.2 : Ms. Vaishali Shinde (appointed)

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CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 3rd DECEMBER, 2021

PER COURT:-

1. We have heard learned counsel for the applicants for some time. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant no.1 Shaikh Abdul Hamid Abdul Gani.

2. Leave granted. The application of applicant no.1 Shaikh Abdul Hamid Abdul Gani is hereby dismissed as withdrawn.

3. The applicants-original accused are seeking quashing of crime no. 221/2019 registered with City Chowk Police Station, Aurangabad for the offence punishable under Sections 341, 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 and also seeking quashing of the criminal proceedings pending before the J.M.F.C, Aurangabad.

4. Learned counsel for the applicants submits that co-accused Shaikh Abdul Hamid is having two wives. Applicant no.2 Anisa is his first wife, whereas respondent no.2-informant Gausiya Begum is his second wife. Applicant No.2 Anisa is the owner in possession of House No. 2848 situated at S.T. Colony, Fajilpura, Aurangabad. Applicant no.2 Anisa is the owner of the said property even prior to her marriage with co-accused Shaikh Abdul Hamid. It has been alleged in the complaint that the informant is residing on the second floor of the said house whereas, the present applicant is residing with her husband co-accused Shaikh Abdul Hamid and their son applicant no.3 Mohamman Noman on the first floor. Learned counsel submits that for entering in the said house, which is admittedly owned by the applicant Anisa, it has been alleged that the informant Gausiya Begum was wrongfully restrained.

5. Learned counsel for the applicants submits that in respect of the incident occurred on the same date, time and place, on the basis of the complaint lodged by applicant Anisa, crime no. 203/2019 came to be registered against the present informant and three others for having committed the offence punishable under Sections 324, 427, 504 r/w 34 of IPC. The said complaint is earlier in time.

6. Learned counsel for the applicants submits that so far as the complaint against the present applicants, which is the subject matter of this application, is concerned, the allegations have been made mainly against co-accused Shaikh Abdul Hamid Abdul Gani, whose application seeking quashing of the proceedings came to be withdrawn today. Learned counsel submits that in the given set of allegations, the offence under Section 341 of IPC is not attracted so far as applicant Nos. 2 and 3 are concerned. Learned counsel further submits that the allegations in respect of the same have been made only against co-accused Shaikh Abdul Hamid Abdul Gani. Learned counsel submits that applicant no.2 Anisa is the housewife and her son applicant no.3 Mohammad Noman is an engineering student. Learned counsel submits that this complaint is nothing but a counter blast to the complaint filed by the applicant Anisa. Due to strained

relations between the two wives of Shaikh Abdul Hamid Abdul Gani, the complaint came to be lodged against each other.

7. 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. The applicants herein not only restrained respondent no.2-informant from entering into the house, but further locked the house, threatened her and also extended beating to her. Learned counsel submits that there is a triable case against these applicants. There is no substance in this criminal application and the same is liable to be dismissed.

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

9. We have carefully gone through the allegations made in the complaint and also perused the charge-sheet. It appears that the applicant Anisa and respondent no.2-informant are the wives of co-accused Shaikh Abdul Hamid Abdul Gani and their relations have been strained. It further appears that applicant Anisa, who is his wife, resides with him along with their son applicant no.3 Mohammad Noman. It is not disputed that the property is owned by applicant Anisa. It further appears that there are vague allegations against applicant Nos. 2 and 3 regarding wrongful restraint of respondent

no.2-informant Gausiya Begum, who is allegedly residing on the second floor of the said house. So far as the allegations of beating and abuses extended to respondent no.2-informant are concerned, those allegations have been made mainly against co-accused Shaikh Abdul Hamid Abdul Gani (husband), whose application seeking quashing of the proceedings came to be withdrawn.

10. We have also perused the typed copy of the FIR bearing no. 203/2019 in respect of the incident occurred on the same date, time and place. Applicant Anisa has lodged the said complaint in the concerned police station and on the basis of the same, crime no. 203/2019 came to be registered against respondent no.2-informant and three others for having committed the offence punishable under Sections 324, 427, 504 r/w 34 of IPC. The said complaint, which is the subject matter of crime no. 203/2019, came to be lodged on 03.06.2019, whereas the complaint before us came to be lodged on 19.06.2019. Thus, considering the allegations as against applicant Nos. 2 and 3, which are general in nature without attributing any specific role, we are inclined to quash the proceedings. Furthermore, applicant no.3 is the engineering student and except his name in the complaint, no specific role has been attributed to him. In view of the same, we proceed to pass the following order.

ORDER

I. Criminal Application is allowed in terms of prayer clause “B”.

II. Criminal Application is accordingly disposed off.

11. We quantify the fees of the counsel appointed to represent no.2 at Rs.2,000/- (Rupees two thousand only) to be paid by the High Court Legal Services Sub-committee, Aurangabad.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)