

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

927 CRIMINAL APPLICATION NO.2095 OF 2020

ASAD SAMAD SHAIKH AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicants : Mr. Adgaonkar Ravibhushan P
APP for Respondent : Mr. S J Salgare
Advocate for Respondent 2 : Mr. More P.P.

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.
Dated : November 18, 2021

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PER COURT :-

1. We have heard the learned counsel for the applicants and the learned counsel appearing for respondent no.2 for some time.

2. The learned counsel for the applicants, on instructions, seeks leave to withdraw this application to the extent of applicant no.1 – Asad Samad Shaikh (husband of respondent No.2).

3. Leave granted. Application of applicant no.1 Asad Samad Shaikh is hereby dismissed as withdrawn.

4. The applicant nos.2 to 9 are the accused persons in connection with crime no.342 of 2020 registered with Shivaji Nagar Police Station, Latur for the offence punishable under sections 498-A, 323, 504, 506 read with section 34 of the Indian Penal Code. By filing this criminal application, the applicants are seeking quashing of the First Information Report so also the criminal proceedings, since during the pendency of this criminal application, charge-sheet has been submitted and the case is now registered bearing RCC No.1514 of 2020 pending before Chief Judicial Magistrate, Latur.

5. Learned counsel for the applicants submits that the allegations have been made mainly against co-accused husband Asad Samad Shaikh, whose application seeking quashing of the proceedings came to be withdrawn, today. Learned counsel submits that though the names of the applicants are mentioned in the FIR, however, allegations are general in nature. Learned counsel submits that applicant nos.2 and 3 are aged mother-in-law and father-in-law respectively of

respondent no.2. They are 65 and 73 years of age, respectively. Applicant no.4, 5 and 6 are the married-sisters-in-law, residing at different places alongwith their respective husband and other family members. The applicant no.7 is the husband of applicant no.4, applicant no.8 is husband of applicant no.6 Farhin. Learned counsel submits that, it is a case of over implication and all the family members have been implicated in connection with the present crime. Learned counsel submits that so far as the incident allegedly taken place on 27.10.2019 is concerned, allegations have been made mainly against co-accused husband and even there is a reference that the applicants herein and some other relatives have tried to give understanding to the co-accused husband. Learned counsel submits that, however, in the subsequent part of the FIR, though, allegations have been made against some of the applicants about beating extended to respondent no.2, however, those allegations are absurd in nature.

6. Learned counsel for respondent no.2 submits that the names of the applicants are mentioned in the FIR with the specific role attributed to each of them. It has been alleged in the complaint that since applicant no.4 Nikhat is issue-less, marriage of co-accused husband to respondent no.2 came to be performed with the sole reason that the child born to respondent no.2 from co-accused husband would be adopted by applicant no.4 Nikhat. Learned counsel submits that though co-accused husband did not like respondent no.2, however, marriage was performed for the said reason. Learned counsel submits that so far as the incident dated 27.10.2019 is concerned, a meeting was arranged at the matrimonial house of the respondent no.2. After the initial talks in the said meeting, applicant nos.2 and 4 extended beating to respondent no.2 so also applicant nos.7 to 9 have also extended beating to respondent no.2 by fist and kick blows. Learned counsel submits that, there is one another incident dated 23.8.2020 quoted in the complaint and allegations have been made against the applicant nos.2, 3 and also 4, 5 and 6 that

they went to the parents house of the respondent no.2 and extended beating to her. Learned counsel submits that there are specific allegations against the applicants. There is a triable case against them.

7. We have also heard the learned APP for the respondent no.1 State.

8. We have carefully gone through the allegations made in the complaint and so also the charge-sheet. It appears that, in the first night after the marriage, co-accused husband had informed to respondent no.2 that he wanted to marry a girl from Aurangabad and he had performed marriage with her only at the instance of the applicant no.5 Jarin Shaikh. Co-accused husband has further explained to respondent no.2 that she should not expect anything from him as a husband. There are allegations that thereafter, for small reasons the co-accused husband used to beat her. So far as the other applicants are concerned, without quoting any date, time and place, though some of the applicants are from different place, it has been alleged that they have

explained to respondent no.2 that her marriage was performed with co-accused husband only for the reason that if the child is born to her, same would be given to the applicant no.4 Nikhat as the applicant no.4 Nikhat is issue-less. Thereafter, respondent no.2 had come to Aurangabad with co-accused husband and started cohabiting with him. She had also joined one employment. Allegations thereafter have been made only against co-accused husband that he used to forcibly collect her monthly salary and used to beat her for various reasons. Though, there is one another incident allegedly occurred on 27.10.2019, however, allegations have been made mainly against co-accused husband, when all the applicants allegedly gathered at the matrimonial house of the respondent no.2, also invited the parents of the respondent no.2 and in the said meeting co-accused husband has made a demand of Rs.15.00 Lakh for purchasing a flat at Aurangabad. Even, there are allegations that co-accused husband had given threats to respondent no.2 if his demand is not complied with. It has been further stated in the

complaint that, at that time, sister-in-law, their respective husband, mother-in-law, father-in-law, parents, brother and other relatives of the respondent no.2 have tried to give understanding to co-accused husband, however, he told them that he would not listen to anyone. However, there are allegations that thereafter, applicant no.2 Shahin mother-in-law and applicant no.4 Nikhat sister-in-law have extended beating to respondent no.2. These allegations are absurd in nature. It is also not clear as to for what reasons they have allegedly extended beating to respondent no.2. Furthermore, there are allegations against applicant nos.7 to 9, who are the husbands of the respondent nos.4,5, and 6 (sister-in-law of respondent no.2), however, those allegations are also absurd in nature. So far as the incident dated 23.8.2020 is concerned, allegations have been made to the effect that, the husband, mother-in-law, father-in-law and all the sisters-in-law went to the parents house of respondent no.2 and extended beating to her. However, those allegations are also absurd in nature.

9. In the case of ***Geeta 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 Vs. 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.”

12. 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, from reading of the complaint and even if the allegations as against the applicants are taken as proved, no case is made out. It is a classic example of over implication. We do not find that there is a triable case against these applicants. Allegations have been made mainly against co-accused husband, whose application seeking quashing of the proceedings came to be withdrawn.

13. In view of the above and in terms of the ratio laid down by the Supreme Court we proceed to pass the following order.

ORDER

1. Criminal Application is hereby allowed in terms of prayer Clause "C" as against the applicants.
2. Criminal Application accordingly disposed off.

(SANDIPKUMAR C. MORE, J.) (V.K. JADHAV, J.)

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