

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

953 CRIMINAL APPLICATION NO.2119 OF 2020

1. Jijabai w/o Janardhan Bade
 2. Janardhan s/o Nivrutti Bade
 3. Vaijinath s/o Janardhan Bade
 4. Vidya w/o Vaijinath Bade
 5. Ushabai w/o Dnyanoba Tidke
- ...Applicants

Versus

1. The State of Maharashtra
 2. Vaishnavi w/o Vilas Bade
- ...Respondents

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Advocate for Applicants : Mr. Kawade Shrikant G.
APP for Respondent-State: Mr. R.D. Sanap
Advocate for Respondent No.2 : Mr. V.G. Kodale & M.S. Adate
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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 12th OCTOBER, 2021**

PER COURT:-

1. We have heard learned counsel for the applicants for some time.
2. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant No. 1 Jijabai Janardhan Bade and applicant No.2 Janardhan Nivrutti Bade. Leave granted. The application of applicant No. 1 Jijabai Janardhan Bade and applicant No.2 Janardhan Nivrutti Bade is dismissed as withdrawn.
3. The applicants before us are accused in connection with crime No. 0205 of 2020 registered with Wadwani police station, Tq. Wadwani, District Beed, for the offences punishable under Sections 498A, 323,

504 r.w. 34 of I.P.C.. During pendency of this application seeking quashing of F.I.R. filed by the present applicants, charge sheet came to be submitted and now the applicants are also seeking quashing of criminal proceedings.

4. Learned counsel for the applicants submits that though the names of the applicants are mentioned in the F.I.R. however, the allegations have been made mainly against co-accused father-in-law and mother-in-law, whose application came to be withdrawn today and the co-accused husband even has not filed application for quashing of F.I.R. and criminal proceedings. Learned counsel has further pointed out that even if the allegations made as against these applicants are accepted as it is, no case is made out against them. The allegations are omnibus without quoting any specific incident. This is case of over implication since almost all family members have been implicated in connection with the present crime. Learned counsel submits that applicant No.3 Vaijinath was serving as teacher from 2009 to 2014 in Yeotmal district and thereafter in the year 2014 he has been transferred to Dharur, district Beed. The applicant No.4 Vidya is the wife of applicant No.3 Vaijinath. The applicant No.5 is married sister-in-law, who resides at Badewadi, Tq. Majalaon, District Beed alongwith her husband and other family members. Learned counsel submits that the first incident of alleged demand of certain amount for purchasing a new tractor is taken place on 10.8.2014 and respondent No.2 started cohabiting again on account of settlement. However, the second

incident allegedly taken place on 9.4.2020 i.e. after a gap of six years. There is no reference nor anything has been revealed during the course of investigation as to what happened during this period of six years. Learned counsel submits that so far as the incident dated 9.4.2020 is concerned, the allegations have been made particularly against co-accused husband.

5. Learned counsel for respondent No.2 submits that the names of applicants are mentioned in the F.I.R. with a specific role attributed to each of them. In the year 2014, respondent No.2 was driven out from the house on account of non-fulfillment of demand of Rs.5,00,000/- for purchasing a new tractor. However, she had again come back for cohabitation due to intervention of her parents and elderly people. However, again on 9.4.2020 she was sent back to her parents' house on account of non-fulfillment of said demand. Learned counsel submits that there is triable case against these applicants. The criminal application is liable to be dismissed.

6. We have also heard learned A.P.P. for the respondent State.

7. On carefully going through the allegations made in the complaint so also the charge sheet, it appears that though the names of the applicants are mentioned in the F.I.R., general allegations have been made against them. It is pertinent to note that after the incident dated 10.8.2014 and even during the period of further cohabitation of

respondent No.2 in her matrimonial home with her husband, the complaint is silent as to what happened thereafter for a period of six years. The allegations have been made in respect of incident allegedly occurred on 9.4.2020 and onwards, however, those allegations are restricted as against co-accused husband. The applicant No.3 is brother-in-law, applicant No.4 is his wife and applicant No.5 is married sister-in-law. The allegations as against them are absurd in nature. It is a classic example of over implication.

8. 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 “the 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 vs. Bharti***, reported in 2010 Cr.L.J. 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 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 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 made 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 No.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, 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 other accused. In Manoj Mahavir, 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 498A case. This Court found the said case to be absurd. In Geeta Mehrotra, 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 proceeding can be quashed. So far as the allegations made as against the applicants are taken as proved, no case is made out against them. 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. In the instant case, the allegations have been made against co-accused husband and also against father-in-law and mother-in-law, whose application seeking quashing of F.I.R. and criminal proceedings came to be withdrawn.

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

O R D E R

- I. Criminal application is allowed in terms of prayer clause "B" to the extent of applicant No. 3. Vaijinath s/o Janardhan Bade, applicant No.4 Vidya w/o Vaijinath Bade and applicant No.5.Ushabai w/o Dnyanoba Tidke.
- II. Criminal application is disposed of.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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