

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

CRIMINAL APPLICATION NO. 2141 OF 2020

01 Shekhar Vilas Jaiswal

02 Prabhavati Vilas Jaiswal

03 Jyoti Sudesh Jaiswal

04 Prashant Vilas Jaiswal

05 Archana Prashant Jaiswal

06 Shubham Prashant Jaiswal

07 Vidya Ravindra Sarode

Applicants

Versus

01 State of Maharashtra

02 Rajeshwari @ Lajo Shekhar Jaiswal

Respondents

Mr. V. B. Patil, advocate for the applicants

Mr. R. V. Dasalkar, APP for Respondent No.1.

Mr. H. P. Randhir, advocate holding for Mr. P. B. Gamot, advocate for Respondent No.2.

**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 Applicants – original accused are seeking quashing of the First Information Report bearing Crime No. 53/2020, registered with Faizpur Police Station, Tq. Yawal, District Jalgaon, for the offences punishable under Sections 498A, 406, 294, 323, 504, 506, and 507 read with Section 34 of the Indian Penal Code.

3 During pendency of this application, charge sheet has been submitted against applicant no.1 – husband. Applicants no. 2 to 7, since protected by the interim orders of this Court, charge sheet is not yet submitted against them.

4 Learned Counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant no.1 – husband of Respondent No.2.

5 Leave granted. Application of Applicant No.1 – Shekhar Jaiswal (husband of Respondent No.2) is hereby dismissed as withdrawn.

6 Learned Counsel for the applicants submits that though names of the applicants are mentioned in the First Information Report, however, allegations against them are general

in nature without quoting any specific incident, as such. The learned Counsel submits that allegations have been made mainly against co-accused husband, whose application, seeking quashing of the proceedings, came to be withdrawn today.

7 Learned Counsel submits that as alleged in the complaint, in the year 2007, Respondent No.2 was driven out of the matrimonial house along with two daughters and she started residing with her parents along with her parents. However, after her parents have paid certain amount to the co-accused husband, Respondent No.2 returned to the matrimonial house for further cohabitation. The learned Counsel submits that the allegations have been made mainly against the co-accused husband (applicant no.1) whose application seeking quashing of the proceedings came to be withdrawn.

8 Learned Counsel for the applicants submits that applicant no.3 – Jyoti is a married sister-in-law of Respondent No.2, who, at present, resides at Shahibagh, Ahmedabad (Gujarat) along with her husband. It is not clear from the allegations made in the complaint as to how and when applicant no.3 had been to the matrimonial home of Respondent No.2 and subjected her to

cruelty. The learned Counsel submits that applicant no.4 is the brother-in-law of Respondent No.2 and applicant no.5 is the wife of applicant no.4 and applicant no.6 is the son of applicants no. 4 and 5. The allegations made against applicants no. 4, 5 and 6 are general in nature. The learned Counsel submits that it is a case of over implication since almost all the family members have been implicated in connection with the present crime. The learned Counsel submits that it has been alleged in the complaint that co-accused husband has developed illicit relations with several women and Respondent No.2 has implicated even applicant no.7 as an accused, who is the third person not related either with applicant no.1 – husband or Respondent No.2.

9 The learned Counsel for Respondent No.2 submits that the names of the applicants are mentioned in the First Information Report with specific role attributed to each of them. The learned Counsel submits that Respondent No.2 was subjected to ill-treatment on account of non fulfillment of demand of Rs. Twenty lakhs for opening up a new hotel and all the applicants have instigated co-accused husband to ill-treat Respondent No.2 on account of non fulfillment of the said demand. The learned Counsel submits that there are allegations in the complaint that

on some occasion, these applicants have extended beating to Respondent No.2. There is a triable case against all these applicants. There is no substance in this application and the application is liable to be dismissed.

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

11 We have carefully perused the police papers and also gone through the contents of the complaint. Though there are certain allegations prior to the year 2007, however, it appears that the marriage had taken place way back in the year 1991. It appears that in the year 2007, Respondent No.2 was driven out of the matrimonial house and she started residing with her parents along with two daughters. It has also been alleged in the complaint that her parents have given an amount of Rs. Five lakhs to co-accused husband and thus Respondent No.2 has returned to her matrimonial house for cohabitation. It further appears from the complaint that thereafter allegations have been made only against applicant no.1 – husband for his extra marital relations with women in the area, etc. However, the application, so far as applicant no.1 – husband is concerned, came to be dismissed as

withdrawn.

12 Applicant no. 2 is the mother-in-law who is 79 years of age. Applicant no.3 Jyoti is the married sister in law of Respondent No.2 residing at Ahmedabad along with her husband. Applicant no.4 is brother-in-law, applicant no.5 is wife of applicant no.4 and applicant no.6 is their son. The allegations made against them are absurd. Applicant no.7 is not the family member of husband of Respondent No.2. In view of the same, provisions of Section 498A are not attracted against the third party.

13 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.”

14 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”.

15 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.”*

16 It is well settled that if the allegations are absurd in nature and no case is made out, the criminal proceedings are liable to be quashed. In the instant case, even if the allegations as

made against applicants no.2 to 7 are held to be proved, no case is made out against them. It is a case of over implication and almost all the family members have been implicated in the present crime. Moreover, applicant no.7 who is not the family member of applicant no.1 -husband, is also implicated in the present crime.

17 In view of the above and in view 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 applicants no. 2 Prabhavati Vilas Jaiswal, 3 Jyoti Sudesh Jaiswal, 4 Prashant Vilas Jaiswal, 5 Archana Prashant Jaiswal, 6 Shubham Prashant Jaiswal and 7 Vidya Ravindra Sarode.

18 Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V. K. JADHAV)
JUDGE

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