

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

CRIMINAL APPLICATION NO. 2152 OF 2020

1. Kamalbai w/o Nivrutti Jelewad,
Age 74 years, Occu. Household
R/o Wagdarwadi, Post Malakoli,
Taluka Loha, District Nanded
2. Choutrabai w/o Yadav Dubukwad,
Age 52 years, Occu. Household,
R/o At Post Gonar, Taluka Kandhar,
District Nanded.
3. Namdeo s/o Nivrutti Jelewad,
Age 52 years, Occu. Service,
R/o Wagdarwadi, Post Malakoli,
Taluka Loha, District Nanded
4. Balaji s/o Nivrutti Jelewad .. Deleted as per Court's
order dated 29.9.2021
5. Renuka w/o Namdeo Jelewad,
Age 43 years, Occu. Household,
R/o Wagdarwadi, Post Malakoli,
Taluka Loha, District Nanded
6. Vaishali w/o Balaji Jelewad,
Age 39 years, Occu. Household,
R/o Flat No.101, Sai Apartment,
Sharda Nagar, Nanded
7. Suresh s/o Namdeo Jelewad,
Age 32 years, Occu. Service,
R/o Mastanpura, Vishnu Nagar,
Nanded, District Nanded
8. Sudarshan s/o Namdeo Jelewad,
Age 29 years, Occu. Service,
R/o Plot No.135, Near Nutan School,
Sector 20, Krushna Nagar,
Chinchwad (East), Pune
9. Shubham s/o Balaji Jelewad,
Age 18 years, Occu. Education,
R/o Plot No.B, Section 110 Ravet,
Pune Pimpri Chinchwad College
of Engineer and Research Hostel

10. Shilpa d/o Balaji Jelewad,
Age 22 years, Occu. Education,
R/o Sow. Shantadevi Vedprakash
Patil Ayurvedic College, Hatta,
District Hingoli

.. Applicants

Versus

1. The State of Maharashtra,
Through Police Station,
Loha, District Nanded
2. Sow. Sandhya @ Rekha w/o
Sangram Jelewad,
Age 30 years, Occu. Household,
R/o at present Shivaji Chowk,
Rajaram Nagar, Loha,
Taluka Loha, District Nanded

..Respondents

Mr U.B. Bilolikar, Advocate for applicants

Mr G.O. Wattamwar, A.P.P. for respondent no.1

Mr Rahul Awasarmol, Advocate h/f Mr R.I. Wakade, Advocate for respondent no.2

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 13th October 2021

PER COURT :

1. By consent, heard finally at admission stage.
2. The applicants are accused persons in connection with F.I.R. No.0185 registered with Police Station, Loha, District Nanded, for the offences punishable under Sections 498-A, 323, 504, 506 read with Sec. 34 of the Indian Penal Code. At present, the investigation is completed and the charge-sheet has been submitted.
3. R.C.C. No.4/2021 is now pending before the Court of Judicial Magistrate, First Class, Loha. By way of this application, the applicants are seeking quashing of the F.I.R., so also the criminal proceedings.

4. The learned Counsel for the applicants submits that though the names of the applicants are mentioned in the F.I.R., however, the allegations as against them are general in nature and no specific incident has been quoted. The learned Counsel submits that nothing has been revealed against the applicants during course of the investigation. The learned Counsel submits that the allegations have been made mainly against co-accused/husband who is not before the Court as applicant. The learned Counsel has pointed out that all the family members have been implicated in connection with the present crime and according to the learned Counsel for the applicants, it is the case of over implication.

5. The learned Counsel for respondent no.2/informant submits that the names of the applicants are mentioned in the F.I.R. with a specific role attributed to them. The learned Counsel submits that so far as the applicant no.6 - Vaishali w/o Balaji Jelewad, applicant no.9 - Shubham s/o Balaji Jelewad and applicant no.10 - Shilpa d/o Balaji Jelewad are concerned, the specific incident has been quoted against them i.e. the incident of beating respondent no.2/informant on account of non-fulfillment of the demand of Rs.4 lakh, for securing employment for co-accused - husband. The learned Counsel submits that there is no substance in this criminal application and the same is liable to be dismissed.

6. We have also heard the learned A.P.P. for respondent no.1/State.

7. We have carefully gone through the complaint; so also the charge-sheet. It appears that the names of the applicant no.1 - Kamalbai w/o Nivrutti Jelewad, applicant no.2 - Choutrabai w/o Yadav Dubukwad, applicant no.3 - Namdeo s/o Nivrutti Jelewad, applicant no.5 - Renuka w/o Namdeo Jelewad, applicant

no.7 - Suresh s/o Namdeo Jelewad, applicant no.8 - Sudarshan s/o Namdeo Jelewad are mentioned in the F.I.R. The allegations as against them are general in nature without quoting any specific incident. It appears that the allegations have been made mainly against the co-accused - husband, who is not before us as an applicant. It has been alleged in the complaint that co-accused - husband is addicted to liquor and gambling. He used to insist respondent no.2/informant to bring Rs.4 lakhs from the parents and subjected respondent no.2/informant with cruelty on account of non-fulfillment of the said demand. So far as applicant no.6 – Vaishali, applicant no.9 – Shubham and applicant no.10 – Shilpa are concerned, there is specific incident quoted against them. As per the allegations made in the complaint, on 11.5.2019 at about 7.00 pm, co-accused/husband returned to the house under the influence of liquor and started beating respondent no.2/informant with fist and kick blows on account of non-fulfillment of the demand of Rs.4 lakhs. Consequently, respondent no.2/informant called her mother by making a phone call. Even, in presence of the mother, co-accused - husband has dragged respondent no.2/informant in a inner room by keeping rope around her neck. Even, the co-accused - husband has given kick blow to the mother of respondent no.2/informant. Thereafter, respondent no.2/informant had rescued herself and along with her mother, went to the Police Station for lodging the complaint. Even they had taken the police yadi from the concerned police station for the medical treatment. Thereafter, when they started proceeding towards police station from the hospital, the co-accused-husband has tried to pacify the quarrel along with applicant no.3 – Namdeo and, therefore, respondent no.2/informant has not lodged the complaint with the concerned police station. However, on the next day, the deceased applicant no.4 – Balaji, applicant no.6

Vaishali, applicant no.9 – Shubham and applicant no.10 – Shilpa have extended the beatings to respondent no.2/informant and also given her abuses on account of non-fulfillment of the said demand of Rs.4 lakhs. In view of the same, we are not inclined to quash the criminal proceedings as against applicants no. 6 - Vaishali, applicant no.9 – Shubham and applicant no.10 – Shilpa. The learned Counsel for the applicants vehemently submitted that applicants no.9 - Shubham and 10 - Shilpa are the students and applicant no.6 Vaishali is the housewife. However, considering the allegations as against them and since the specific incident is quoted, we are not inclined to quash the criminal proceedings against them.

8. In a case of **Taramani Parakh Vs. State of Madhya Pradesh and Ors.**, reported in **(2015) 11 SCC 260**, the Supreme Court in paragraphs no.10, 14 and 15 has made 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, 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, 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 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.”

9. It is well settled that if the allegations are absurd or do not make out any case, then 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 the instant case, except applicants no.6 - Vaishali, applicant no.9 – Shubham and applicant no.10 – Shilpa, the allegations against the other applicants are absurd in nature. Even, from reading the complaint and even if

the allegations are taken as proved against them, no case is made out. So far as applicant no.6 - Vaishali, applicant no.9 – Shubham and applicant no.10 – Shilpa are concerned, there is triable case against them. Hence, we proceed to pass the following order :

ORDER

(I) Criminal Application is hereby partly allowed in terms of prayer clauses (B) and (C-1) to the extent of applicant no.1 - Kamalbai w/o Nivrutti Jelewad, applicant no.2 - Choutrabai w/o Yadav Dubukwad, applicant no.3 - Namdeo s/o Nivrutti Jelewad, applicant no.5 - Renuka w/o Namdeo Jelewad, applicant no.7 - Suresh s/o Namdeo Jelewad, applicant no.8 - Sudarshan s/o Namdeo Jelewad.

(II) The application of applicant no.6 - Vaishali w/o Balaji Jelewad, applicant no.9 - Shubham s/o Balaji Jelewad, applicant no.10 - Shilpa d/o Balaji Jelewad is hereby dismissed.

(III) Criminal Application is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

(V.K. JADHAV, J.)

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