

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

948 CRIMINAL APPLICATION NO.2258 OF 2020

GORAKH S/O DHONDIRAM WAGH & ANR.  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

...  
Mr. Dhananjay K. Thote, Advocate for applicant  
Mr. S.J. Salgare, APP for respondent – State  
Mr. C.C. Deshpande, Advocate for respondent no. 2  
...

**CORAM : V.K. JADHAV AND  
SANDIPKUMAR C. MORE, JJ.**

**DATE : 24<sup>TH</sup> NOVEMBER 2021**

**ORAL ORDER :**

1. Leave to correct the prayer clause (B-1) to the extent of the number of case pending before the Court at Vaijapur.
2. The applicants – original accused are seeking quashing of the FIR bearing crime no. 369 of 2020 registered with Vaijapur Police Station, District – Aurangabad for the offences punishable under section 498-A, 377, 323, 504, 506 r/w. 34 of the Indian Penal Code. During the pendency of this Criminal Application, chargesheet has been submitted. The applicants – accused are also seeking quashing of the proceedings bearing RCC no. 46 of 2021 pending before the Court at Vaijapur.
3. Learned counsel for the applicant submits that the applicant no. 2 is the sister-in-law of the respondent no. 2. Applicant no. 1 is husband of applicant no. 2. Learned counsel submits that though the

names of the applicants are mentioned in the FIR, however, except their names, no allegations have been made against them. So far as applicant no. 1 is concerned, the allegations against him are vague in nature. Learned counsel submits that it is a case of over-implication and the family members have been implicated in connection with the present crime. Learned counsel has pointed out from the complaint that the allegations only have been made against the co-accused, who is not an applicant before this Court.

4. Learned counsel for the respondent no. 2 submits that the applicant no. 1 is serving in Police department. He is an influential person. Even after registration of this crime, applicant no. 1 has given threats to respondent no. 2 for withdrawal of the complaint. Learned counsel submits that the names of the applicants are mentioned in the FIR with a specific role attributed to each of them. There is no substance in this Criminal Application. Criminal Application is liable to be dismissed.

5. We have also heard learned APP for the respondents.

6. We have carefully perused the allegations in the FIR and have also gone through the chargesheet. It appears that the respondent no. 2 got married with co-accused Sandip way back in the year 2008. Co-accused Sandip is serving in Army. The allegations have been made mainly against him pertaining to his sex urge etc. So far as present applicants are concerned, applicant no. 2 is the sister-

in-law of respondent no. 2 and applicant no. 1 is the husband of applicant no. 2. It has been simply alleged in the complaint that applicant no. 1, who is serving in the Police department, used to give threats to the respondent no. 2. So far as applicant no. 2 is concerned, except her name in the complaint, no allegations are made against her. Even no details have been given so far as the allegations as against applicant no. 1 are concerned.

7. 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.”

8. It is well settled that in a matrimonial case, the Courts have to be cautious when omnibus allegations are made, particularly against the accused, who are generally not connected with the affairs of the couple. In the instant case, from the reading of the FIR and even if the allegations as against the applicants are taken as proved, no case is made out. On the other hand, the allegations as against the applicant no.1 are absurd.

9. In view of the same, in terms of the law laid down by the Supreme Court in the above cited case, we proceed to pass the following order :

**ORDER**

- I) Criminal Application is allowed in terms of prayer clause (B) and (B-1).
- II) Criminal Application is accordingly disposed of.

**[SANDIPKUMAR C. MORE, J.]**

**[ V.K. JADHAV, J. ]**

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