

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

44 CRIMINAL APPLICATION NO.2407 OF 2020

1. Pandurang S/o. Uttamrao Pophale
2. Vatsalabai W/o. Uttamrao Pophale
3. Uttamrao S/o. Kachru Pophale
4. Gayabai W/o. Diliprao Bhosale
5. Diliprao S/o. Keshavrao Bhosale
6. Dadasaheb S/o. Diliprao Bhosale
7. Gangasagar W/o. Nivratti Bochara
8. Nivratti S/o. Ramrao Bochara
9. Kakasaheb S/o. Rajaram Dhage
10. Kamal @ Sunita W/o. Kakasaheb Dhage
11. Kailash S/o. Shankar Thale
12. Radhabai W/o. Kailash Thale ...Applicants

Versus

1. The State of Maharashtra
2. Varsha W/o. Pandurang Pophale,
Age : 28 years, occu: Nil,
R/o. c/o. Bhanudas Dadarao Goje,
at Kumbephal,
Tq. & Dist. Aurangabad. ...Respondents

Mr Vijay B. Jogdand Patil, Advocate for Applicants
Mr Shashibhushan P. Deshmukh, APP for Respondent No.1-State
Mr D.J. Patil, Advocate for Respondent No. 2

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

DATE : 11th OCTOBER, 2021

PER COURT :

1. Heard.
2. The learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant No.1 Pandurang s/o Uttamrao Pophale, applicant No.2 Vatsalabai w/o Uttamrao Pophale and applicant No. 3 Uttamrao s/o Kachru Pophale.
3. Leave granted.
4. The application of applicant Nos. 1 to 3 is hereby dismissed as withdrawn.
5. So far as the applicant Nos. 4 to 12 are concerned, they are accused in connection with Crime No. 494/2020 registered with Karmad Police Station, Dist. Aurangabad for the offence punishable under section 498-A, 323, 504 read with 34 of I.P.C.
6. Meanwhile, the investigation is completed and the charge sheet has been submitted at present. The case is registered as R.C.C. No. 145/2021 pending before the Judicial Magistrate First Class, Aurangabad. The applicants are seeking quashing of the F.I.R. so also, the criminal proceedings by filing the present criminal application.
7. The learned counsel for the applicants submits that though the names of the applicants are mentioned in the F.I.R., however, omnibus allegations have been made against them without attributing any specific role or without quoting any specific incident.

8. The learned counsel submits that the allegations have been made only against the husband, father-in-law and mother-in-law whose applications seeking quashing of the criminal proceedings came to be withdrawn today.

9. The learned counsel submits that it is a purely case of the over-implication and almost all the family members have been arraigned as an accused persons in connection with the present crime. In all, 12 accused persons came to be implicated in connection with the present crime.

10. Learned counsel for respondent No. 2 submits that the names of the applicants are mentioned in the F.I.R. with the specific allegations against each of them. Respondent No.2/informant was treated well for the the period of one year and thereafter she was subjected to cruelty for various reasons. The learned counsel submits that the applicants used to instigate the co-accused persons and on the basis of their instigation, respondent No. 2/informant was subjected to cruelty.

11. We have also heard the learned A.P.P. for the Respondent/State.

12. We have carefully gone through the allegations made in the complaint, so also the charge sheet. Though we find the names mentioned in the F.I.R., however, no specific role has been attributed to each of them. There are omnibus allegations. The allegations are absurd in nature. The applicant No. 4 is the married sister-in-law, aged 50 years.

Respondent No.2/informant has not only implicated the said married sister-in-law Gayabai, however, her husband (applicant No.5) and her son (applicant No.6) are also implicated in connection with the present crime. Similarly, Applicant No. 7 is the another sister-in-law, who is 48 years of age. Her husband (applicant No.8) is also implicated in connection with the present crime. Applicant No.10 is also married sister-in-law, 38 years of age and her husband (applicant No.9) is also implicated in connection with the present crime. Lastly, applicant No. 12, who is another sister-in-law, 40 years of age, who has been implicated in connection with the present crime along with her husband (applicant N0.11) Kailash. Almost, all the family members are implicated in connection with the present crime.

13. 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.”

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 Nos. 10, 14 and 15, the Hon'ble 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."*

16. 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, we find that the allegations are absurd and do not make out any case. From reading of the complaint, even if the allegations are taken as proved, no case is made out as against these applicants. There are omnibus allegations against them about the instigation. However, no

specific incident has been quoted and even the allegations have been made to the effect that by making the phone call, they used to instigate co-accused persons.

17. Thus, considering the entire aspects of the case and in view of the ratio laid down by the Hon'ble Supreme Court in the above cited case, we are inclined to quash the F.I.R. so also the criminal proceedings and proceed to pass the following order :-

ORDER

- (I) The Criminal Application is allowed in terms of prayer clause (B) and (B-1) to the extent of applicant No. 4-Gayabai W/o. Diliprao S/o. Bhosale, Applicant No. 5-Diliprao S/o. Keshavrao Bhosale, Applicant No. 6-Dadasaheb S/o. Diliprao Bhosale, Applicant No.7-Gangasagar W/o. Nivratti Bhosale, Applicant No.8-Nivratti S/o. Ramrao Bochare, Applicant No.9-Kakasaheb S/o.Rajaram Dhage, Applicant No.10-Kamal @ Sunita W/o. Kakasaheb Dhage, Applicant No.11-Kailash S/o. Shankar Thale and Applicant No.12- Radhabai Kailash Thale.
- (II) The Criminal Application is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

[V.K. JADHAV, J.]

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