

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 CRIMINAL APPLICATION NO. 2949 OF 2019

PURUSHOTTAM SURESH CHAUDHARI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. N. L. Choudhari
APP for Respondent No.1-State : Mr. R. V. Dasalkar
Advocate for Respondent No.2 : Mr. S. R. Patil

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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 06th OCTOBER, 2021**

PER COURT:-

1. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant nos. 1 to 3.
2. Leave granted. The application of applicant no.1. Purushottam Suresh Chaudhari, 2. Suresh Shankar Chaudhari and 3. Meena Suresh Chaudhari is hereby dismissed as withdrawn.
3. Applicant nos. 4 to 7 are the accused persons in connection with crime no. 184/2019 registered with Ramanand Nagar Police

Station, Jalgaon, District Jalgaon for the offence punishable under Sections 498-A, 323, 406, 504, 506 r/w 34 of IPC. During pendency of this criminal application, charge-sheet has been submitted and thus amendment was carried out in the prayer clause under permission of the Court. The applicants are also seeking quashing of the criminal proceedings.

4. Learned counsel for the applicants submits that the allegations have made mainly against co-accused husband, father-in-law and mother-in-law, whose application seeking quashing of the criminal proceedings came to be withdrawn today. Learned counsel submits that applicant no.4 Rahul is the brother-in-law who is serving in Police Department as a Constable and applicant no.5 Vrashali is the married sister-in-law. Applicant no.6 Ganesh is the husband of applicant no.5. Applicant no.7 Gangaram is a distant relative. Learned counsel submits that applicant nos. 5 and 6 reside at Chandwad, Nashik Rural, District Nashik. Learned counsel has pointed out from the allegations made in the complaint so also from the charge-sheet that the allegations against these applicants are general in nature without quoting any specific incident. Learned counsel submits that it is a case of over-

implication and all the family members came to be implicated in connection with the present crime.

5. Learned counsel for respondent no.2-informant submits that names of all the applicants are mentioned in the FIR with a specific role attributed to each of them. Learned counsel submits that the respondent-informant was subjected to cruelty on account of non-fulfillment of a demand of Rs.5,00,000/- for purchasing a plot. She was also subjected to ill-treatment for the reason that co-accused husband was suspecting about her character and co-accused husband, mother-in-law and father-in-law used to keep her in a locked room. Learned counsel submits that there is sufficient evidence against the applicants.

6. We have also heard learned APP for the respondent-State.

7. We have carefully gone through the allegations made in the complaint and also the charge-sheet. Though names of the applicant nos. 4 to 7 are mentioned in the FIR, however, the allegations against them are general in nature without quoting any specific incident. So far as applicant no.4 Rahul is concerned, who

is the brother-in-law serving in Police Department, no specific allegations have been made against him. Applicant no.5 Vrashali is the married sister-in-law and she resides at Chandwad, Nashik Rural, District Nashik along with her husband i.e. applicant no.6 Ganesh. It has been merely alleged in the complaint that applicant no.5 had gone to her parents' house for delivery purpose and at that time, she has scolded respondent no.2-informant for the reason that she did not touch her feet. Except this incident, the allegations as against these applicants are absurd in nature.

8. 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."

9. 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”.

10. In the case of ***Taramani Parakh v. 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 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.

11. to 13.

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.”*

11. In the instant case, we find that the allegations as against the applicant nos. 4 to 7 are absurd and do not make out any case. There is no triable case against them. We find that the allegations have been made mainly against co-accused husband, father-in-law and mother-in-law, whose application seeking quashing of the proceedings came to be withdrawn today. It is well settled that in matrimonial cases, the courts have to be cautious when omnibus allegations are made, particularly against the relatives who are not generally concerned with the affairs of the couple. The instant case is a classic example of over-implication since almost all the family members have been implicated in connection with the present crime. We are thus inclined to quash the FIR and the criminal proceedings to the extent of applicant nos. 4 to 7. Hence, we proceed to pass the following order:

ORDER

- I. The criminal application is hereby allowed in terms of prayer clauses “B” and “B-1” to the extent of applicant nos. 4. Rahul Suresh Chaudhari (accused no.4), 5. Vrashali Ganesh Vyavhare (accused no.5), 6. Ganesh

Mukund Vyavhare (accused no.6) and 7. Gangaram
Kishan Chaudhari (accused no.7).

II. The Criminal Application is accordingly disposed off.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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