

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

43 CRIMINAL APPLICATION NO.3145 OF 2019

1. Dattatray S/o. Vishnupant Fartade
2. Ashadevi W/o. Vishnupant Fartade
3. Suraj S/o. Vishnupant Fartade
4. Venkatesh S/o. Vishnupant Fartade
5. Vasant S/o. Namdeo Ingle
6. Shakti W/o. Vasant Ingle **....Applicants.**

Vs.

1. The State of Maharashtra and Anr. **....Respondents.**

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Advocate for Applicants : Mr. R.S. Shinde
APP for Respondent 1/State : Mr. R.V. Dasalkar
Advocate for Respondent 2 : Mr. Ravindra Nirmal (appointed)

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**CORAM : V.K. JADHAV &
SANDIPKUMAR C. MORE, JJ.**
DATED : 13/12/2021.

PER COURT :

1. By consent of parties, heard finally at admission stage.

2. The learned counsel for applicants on instruction seeks leave to withdraw the application of applicant Nos. 1 and 2. Leave granted. Application of applicant No. 1 Dattatray (husband of respondent No. 2) and respondent No. 2 Ashadevi (mother in law of respondent No. 2) is hereby dismissed as withdrawn.

3. The applicants are seeking quashing of the F.I.R. bearing Crime No. 32/2017 registered with Police Station Mahur, District Nanded and also seeking quashing of the proceeding bearing R.C.C.No. 19/2019 pending before the Judicial Magistrate, First Class, Mahur.

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 without quoting any instance as such. The learned counsel for the applicants submits that applicant Nos. 3, 4 and 5 are brother in laws and applicant No. 6 is the wife of applicant No. 5. The learned counsel submits that this is the case of over implication since all the family members have implicated in connection with the present crime. All the applicants, brother in laws are residing separately at different villages along with their family members. All of them are married.

5. The learned counsel for respondent No. 2 submits that the names of applicants are mentioned in the F.I.R. with the specific role attributed to each of them. There is triable case against them. There is no substance in the criminal application. The criminal application is liable to be dismissed.

6. We have also heard the learned APP for respondent No. 2. We have carefully gone through the contents of the complaint and also perused the chargesheet. It appears that the allegations have been made mainly against co-accused, husband and co-accused mother in law, whose application came to be withdrawn today. Though we find the names of the applicants mentioned in the F.I.R., however, allegations as against them are general in nature. It is the case of over implication.

7. 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 “the 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.”

8. In the case of *Neelu Chopra and others vs. Bharti*, reported in *2010 Cr.L.J. 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 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.”

9. 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.”

10. It is well settled that if the allegations are absurd in nature and if no case is made out, the proceedings are liable to be quashed. In the instant case, even if the allegations as made against these applicants are held to be proved, no case is made out against them.

11. In view of the same and in terms of the ratio laid down by the Supreme Court in above cited cases, we proceed to pass the following order.

ORDER

I. Criminal application is allowed in terms of prayer clause ‘B’ and ‘C’. Criminal application is accordingly disposed of.

II. We quantify the fees of the learned counsel appointed for respondent No. 2 at Rs.2,000/- (Rupees two thousand only) to be paid by the High Court Legal Services Sub Committee, Aurangabad.

[SANDIPKUMAR C. MORE, J.]

[V.K. JADHAV, J.]

ssc/