

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

932 CRIMINAL APPLICATION NO. 3515 OF 2019

DEEPAK S/O. BHUSHAN HAMILPURKAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Adgaonkar Ravibhushan P.
APP for Respondent No.1-State : Mr. R. D. Sanap
Advocate for Respondent No.2 : Mr. P. P. More

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CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 22nd DECEMBER, 2021

PER COURT:-

1. We have heard learned counsel for the applicants for some time. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant nos. 1 and 2.

2. Leave granted. The application to the extent of applicant no.1-Deepak s/o Bhushan Hamilpurkar (husband of respondent no.2) and applicant no.2-Vanita w/o Bhushan Hamilpurkar (mother-in-law of respondent no.2) is hereby dismissed as withdrawn with liberty to both of them to file an application for discharge before the trial court, if so desired.

3. The applicants are seeking quashing of the FIR in connection with crime no. 284 of 2019 registered with MIDC Police Station, Latur for the offence punishable under Sections 498-A, 323, 504, 506 r/w 34 of IPC. During pendency of this application, charge-sheet came to be submitted. The applicants are thus seeking quashing of the proceedings bearing RCC No. 112 of 2020 pending before the 2nd Joint Judicial Magistrate First Class, Latur.

4. Learned counsel for the applicants submits that though names of the applicants are mentioned in the FIR, however, the allegations as against them are general in nature without attributing any specific role or quoting any specific incident. Applicant no.3 is the father-in-law, applicant no.4 is the brother-in-law, applicant no.5 is the married sister-in-law and applicant no.6 is her husband. Learned counsel for the applicants submits that it is a case of over-implication.

5. Learned counsel for respondent no.2-informant submits that names of the applicants are mentioned in the FIR with a specific role attributed to each of them. Even though charge-sheet is submitted, learned counsel has tried to place before us certain documents indicating involvement of co-accused mother-in-law. We have not taken the said documents on record. However, learned counsel for the

applicants, on instructions, withdrew the application of co-accused husband and co-accused mother-in-law. Learned counsel for respondent no.2 submits that there is a triable case against the applicants. There is no substance in the criminal application and the same is liable to be dismissed.

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

7. We have carefully gone through the contents of the complaint, so also the charge-sheet. Though we find names of the applicants mentioned in the FIR, however, the allegations as against them are general in nature without attributing any specific role or quoting any specific incident against them. It has been simply alleged in the complaint that the applicants and the co-accused persons have demanded certain amount and on account of non-fulfillment of the said amount, subjected respondent no.2 to cruelty. It further appears that the allegations have been made mainly against the co-accused husband. However, the allegations as against applicant nos. 3 to 6 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. It is well settled that if the allegations are absurd in nature and no case is made out, the proceedings are liable to be quashed. In the instant case, even if the allegations as against the applicants are taken as proved, no case is made out. Thus, continuation of the proceedings against these applicants will be an abuse of the process of the Court. Thus, considering the entire aspect of the case and in view of the ratio laid down by the Supreme Court in the above cited cases, we proceed to pass the following order :

O R D E R

I. The Criminal Application is hereby allowed in terms of prayer clauses “B” and “C” to the extent of applicant no. 3-Bhushan s/o Narsingrao Hamilpurkar, applicant no.4-Krishna s/o Bhushan Hamilpurkar, applicant no.5-Pooja w/o Nilakanth Waghmare and applicant no.6-Nilakanth s/o Revanasiddapa Waghmare.

II. The Criminal Application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

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