

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

934 CRIMINAL APPLICATION NO.4030 OF 2019

MANIK SHYAMRAO CHAUDHARI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

.....
Advocate for Applicants : Mr. Choudhari N. L.
APP for Respondent-State: Mr. R.V. Dasalkar
Advocate for Respondent No.2 : Mr. Amol Sawant
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**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 29th OCTOBER, 2021**

PER COURT:-

1. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant No.1 Manik Shyamrao Chaudhari and applicant No.2 Sunanda Manik Chaudhari. Leave granted. The application of applicant No.1 Manik Shyamrao Chaudhari and applicant No.2 Sunanda Manik Chaudhari is hereby dismissed as withdrawn.

2. Learned counsel for the applicants submits that the applicants are seeking quashing of F.I.R. as well as the criminal proceedings. Learned counsel submits that though the names of the applicants are mentioned in the F.I.R. however, general allegations have been made against them without quoting any specific incident. Learned counsel submits that it is a case of over implication. The applicant No.3 is married sister in law, the applicant No.4 is brother of father-in-

law of respondent No.2, applicant No.5 is also married sister in law, applicant No.6 is her husband, applicant No.7 is father of applicant No.6, applicant No.8 is another married sister-in-law and applicant No.9 is her husband. All sisters-in-laws alongwith their respective husbands reside at different places at Pune and Nashik. The applicant No.4, the brother of father-in-law of respondent No.2, is 71 years of age.

3. Mr. Sawant, learned counsel for respondent No.2 submits that the names of applicants are mentioned in the F.I.R. with specific role attributed to each of them. Learned counsel submits that at the instigation of these applicants, co-accused used to harass respondent No.2 for various reasons and also for non fulfilment of demand. Learned counsel submits that though the married sisters-in-laws reside at different places, however, on some occasions they had been to their parents house and at that time they have instigated co-accused persons. Learned counsel submits that applicant No.3 Vidya got married after the incident and before that she was residing with her parents.

4. We have also heard learned A.P.P. for respondent No.1 State.

5. We have carefully gone through the allegations made in the F.I.R. so also in the charge sheet. Though we find the names of the

applicants are mentioned in the F.I.R. however, general allegations seem to have been made against them. There is no specific incident quoted. We find that the allegations are absurd in nature. It is a case of over implication, as almost all family members have been implicated in connection with the present crime. It is pertinent to note that even though applicant No.5 Suvana, the married sister in law, aged 34 years, resides at Nashik, her husband and her father-in-law are also arraigned as accused persons in connection with the present crime. Similarly, applicant No.8, who is also married sister-in-law of respondent No.2, resides at Pune, she has been implicated as accused in connection with the present crime alongwith her husband applicant No.9 Pramod.

6. 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.”

7. 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.”

8. 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.”

9. In the instant case, the allegations are absurd in nature and do not make out any case. From reading of complaint and even after going through the evidence collected during the course of investigation, even if the said allegations are taken as proved, no case is made out against the applicants. There is no triable case against these applicants. It is well settled that in the matrimonial case, the courts have to be cautious when the omnibus allegations are made particularly against the relatives, who are not generally concerned with the affairs of couple. It further appears that the allegations have been made against co-accused i.e. husband, father-in-law and mother-in-law, whose application seeking quashing of F.I.R. and the criminal proceedings came to be withdrawn.

10. In view of above and in terms of 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. Criminal application is hereby allowed in terms of prayer clauses "B" and "B-1" to the extent of applicant Nos. 3 to 9.
- II. Criminal application is accordingly disposed of.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)

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