

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.479 OF 2019

1. Dr. Irfan s/o Hamid Khan
 2. Hamid Khan s/o Mehboob Khan
 3. Zakiya Begum w/o Hamid Khan
 4. Farheen Khanam w/o Shaikh Jameer
 5. Afreen Khan Sayyad Ashfak
 6. Samreen Khan d/o Hameed Khan
 7. Irshad Khan s/o Hameed Khan
 8. Shaikh Zameer s/o Shaikh Dadan
 9. Yusuf Khan s/o Mehboob Applicants
- Versus
1. The State of Maharashtra
 2. Dr. Farheen w/o Irfan Khan Respondents

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Mr. S.M. Kulkarni, Advocate for the applicants.
Mr. M.M. Nerlikar, A.P.P. for respondent No. 1 – State.
Mr. S.S. Kazi, Advocate for respondent No. 2.

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CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.

DATE : 12-01-2022.

ORDER (Per Sandipkumar C. More) :

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

2. Learned Counsel for the applicants argued for some time and then on instructions seeks leave to withdraw the application of present applicant Nos.1 to 3 who are the husband, father-in-law and mother-in-law of respondent No. 2 – informant. Accordingly, leave granted and the application of present applicant No. 1 Dr. Irfan s/o Hamid Khan (husband of respondent No. 2), applicant No. 2 Hamid Khan s/o Mehboob Khan (father-in-law of respondent No.2) and applicant No.3 Zakiya Begum w/o Hamid Khan (mother-in-law of respondent No. 2) is hereby dismissed as withdrawn.

3. The applicants are seeking quashing of F.I.R. in Crime No. 22/2019 registered with Vimantal Police Station, Nanded for the offences punishable under Sections 498-A, 494, 504, 506 read with Section 34 of the Indian Penal Code (for short "I.P.C.").

4. Learned Counsel for the applicants submits that though the names of the present applicants are mentioned in the F.I.R., but there are allegations of general nature against them. No role with specific details, such as, day and dates is attributed to them in respect of the alleged ill-treatment to

respondent No. 2. He further submits that this is a clear case of over-implication since almost all the family members of the husband of respondent No. 2 – informant are arrayed as an accused.

5. On the contrary, learned Counsel for respondent No. 2 submits that the names of the applicants are mentioned in the F.I.R. with specific role attributed against each of them. Further, considering the nature of those allegations, the complaint cannot be rejected at the threshold by exercising powers under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) as the allegations as to the conduct of the applicants are certainly sufficient to infer that they subjected respondent No. 2 – informant to cruelty. It is further submitted that there is triable case against the applicants, and therefore, the application is liable to be dismissed.

6. We have also heard the learned A.P.P. for respondent No.1 – State.

7. We have carefully gone through the allegations made in the complaint and also perused the material on record. Though the names of these applicants are mentioned

in the F.I.R., but on perusal of the same, these allegations appear omnibus and even absurd in nature. Moreover, the same are general in nature and no role of each of the applicant with respect to the specific day and date, is mentioned therein. This certainly appears a case of over-implication since all the family members have been implicated in the crime. Further, the allegations appear mainly against the husband, father-in-law and mother-in-law of respondent No.2 whose application is already withdrawn and dismissed.

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 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.

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. Though the learned Counsel for respondent No.2 has relied upon judgments of the Supreme Court in the cases of *Pritam Ashok Sadaphule and others vs. State of Maharashtra and another* reported in (2015) 11 SCC 769; and *Bhaskar Lal Sharma and another vs. Monica and others* reported in (2014) 3 SCC 383 wherein the Supreme Court, by quoting certain instances observed that quashment under Section 482 of Cr.P.C. is not warranted, however, in the cases of *Gita Merotra vs. State of U.P., Neelu Chopra vs. Bharti* and *Taramani Parakh vs. State of Madhya Pradesh* (cited supra) it has been settled that if the allegations are general in nature without specifying the role played by each of the family members, then no case is made out. Here in this case, the allegations are mainly against the co-accused husband, father-in-law and mother-in-law whose application seeking

quashing of F.I.R. has already been withdrawn. The allegations against the remaining present applicant Nos. 4 to 9, even if they are held to be proved, then also no offence against them under the aforesaid sections, is made out. So far as the Section 494 of I.P.C. is concerned, it reads as follows :

“494-Marrying again during lifetime of husband or wife - Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

12. The aforesaid section provides that in the event of conducting second marriage, the husband / wife shall be punished with imprisonment in the event such marriage is void by reason of its taking place during the lifetime of such husband / wife. It is true that personal law applicable to Muslims contemplates about four marriages by Muslim men. One of the most important ingredients to attract Section 494 of I.P.C. is that the second marriage should be void. So far as the Muslim men are concerned, the second marriage is not void. Consequently, Section 494 of I.P.C. is not attracted here in this case since all the applicants are belonging to Muslim community.

13. This Court, in the case of ***Kalim Shaikh Munaf and others vs. State of Maharashtra and another (Criminal Application No. 2255 of 2019)*** has referred the observations of Supreme Court in the case of ***Dr. Surajmani Stella Kujur vs. Durga Charan Hansdah reported in (2001) 3 SCC 13*** in para Nos.9 and 10, as below :

“9. The Apex Court in *Dr. Surajmani Stella Kujur Vs. Durga Charan Hansdah [2001 KHC 1043: (2001) 3 SCC 13: AIR 2001 SC 938]* held that the fact of the second marriage being void is *sine qua non* for the applicability of Section 494 of IPC. The Muslim male can have four wives at a time. However, if the Muslim male marries a fifth wife, he can very well be prosecuted under section 494 of IPC since the fifth marriage is void as the present law permits only four wives to be taken together. One of the most ingredients to attract the offence under section 494 IPC is that the second marriage should be void. So far as Muslim males are concerned, since they can have four wives living at a time, the second marriage is not void. Since the second marriage is not void, the offence under section 494 IPC is not attracted, even if the Muslim male marries a second woman. In this case, there is no allegation that the first petitioner had married more than once before the marriage with the second petitioner. Therefore, no offence under section 494 IPC is attracted in this

case. Consequently, the abetment of the said offence is also not attracted. For the said reason, there cannot be any successful prosecution against the petitioners for the above said offences and consequently, no purpose will be served even if the prosecution against the petitioners is permitted to be continued. For the said reason, I am inclined to quash annexure A-1 complaint and further proceedings against the petitioners in CC No.1232 of 2015 on the files of the Court below, in exercise of the inherent power under section 482 of Cr.P.C. to meet the ends of justice and accordingly, I order so.”

14. Thus, if a Muslim male under personal law marries the second woman, then Section 494 of the I.P.C. does not attract. Therefore, in view of the above and ratio laid down by the Supreme Court in the aforesaid cases, we find this case being a case of over- implication. Moreover, in the given circumstances, section 494 of the I.P.C. also does not attract, and therefore, we pass the following order.

ORDER

- (i) Criminal Application is hereby allowed in terms of prayer clause [B] to the extent of applicant No.4 Farheen Khanam w/o Shaikh Jameer, applicant No.5 Afreen Khan

Sayyad Ashfak, applicant No.6 Samreen Khan d/o Hameed Khan, applicant No.7 Irshad Khan s/o Hameed Khan, applicant No.8 Shaikh Zameer s/o Shaikh Dadan and applicant No. 9 Yusuf Khan s/o Mehboob.

(ii) Criminal Application is hereby disposed of.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)

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