

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

948 CRIMINAL APPLICATION NO.735 OF 2021

ANIL KISHANRAO CHAVHAN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Bora Satyajit S.
APP for Respondents : Mr. R V Dasalkar
Advocate for Respondent 2 : Mr. Rohit Patwardhan
(appointed)

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.
Dated: March 02, 2022

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PER COURT :-

1. Leave to add number of the pending case and name of the Court in the prayer clause. Addition be carried out forthwith.
2. We have heard the learned counsel for the applicant for some.
3. The learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant no.1.
4. Leave granted.

5. Application of applicant no.1 Anil Kishanrao Chavan (husband of respondent no.2) is hereby dismissed as withdrawn.

6. Heard finally with consent at admission stage.

7. The applicants are seeking quashing of the FIR bearing Crime No.122 of 2020 registered with Manatha Police Station, District Nanded for the offence punishable under sections 498-A, 323, 504, 506, 34 of the IPC and also seeking quashing of the proceedings bearing RCC No.55 of 2021 pending before the JMFC, Hadgaon.

8. The learned counsel for the applicants submits that the allegations have been made mainly against co-accused husband Anil, whose application seeking quashing of the proceedings came to be withdrawn today. Learned counsel submits that though names of the applicants are mentioned in the FIR, however, allegations as against them are general and absurd in nature. Learned counsel submits that the applicant

nos.2 and 3, who are father-in-law and mother-in-law respectively are the aged persons, applicant no.4 is the brother in law, applicant no.5 and 6 are the married sister-in-law residing at different places and applicant no.7 is the husband of applicant no.6. Learned counsel submits that though their names are mentioned in the complaint, however, no specific role has been attributed to them by quoting any incident.

9. Learned counsel for respondent no.2 submits that names of the applicants are mentioned in the FIR. Even though allegations have been made against co-accused husband, however, present applicants allegedly instigated him for extending cruelty to respondent no.2/ informant. There is a triable case against all the applicants. There is no substance in this application and the same is liable to be dismissed.

10. We have also heard the learned APP for the respondent no.1-Sate.

11. We have carefully gone through the contents of the complaint and also perused the charge-sheet. It appears that the allegations have been made mainly against co-accused husband whose application seeking quashing of the FIR came to be withdrawn today. Though we find names of the applicants are mentioned in the FIR, however, allegations as against them are general in nature. It is a case of over implication. Almost all the family members have been implicated in connection with the crime, including the married sister-in-law and even husband of one of the married sister-in-law is also not spared. Applicant no.5 married sister-in-law resides at Nanded, where as applicant no.6, who is another married sister-in-law resides at Basmat, District Hingoli. Allegations as against them are absurd in nature.

12. In the case of **Geeta Mehrotra and others Vs. 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.”

13. 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”.

14. 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 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.”

15. Learned counsel for the applicants has also placed his reliance on a judgment in the case of **Kahkashan Kausar @ Sonam and ors Vs. State of Bihar and others in** Criminal Appeal No.195 of 2022 (arising out of SLP (Cri) No.6545 of 2020), wherein the Supreme Court in paragraph nos.18 and 19 has made following observations :-

18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of [section 498A](#) IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.
19. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that ‘all accused harassed her mentally and threatened her of terminating her pregnancy’. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the

veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.

16. It is well settled that if the allegations are absurd in nature and no case is made out, then proceedings are liable to be quashed.

17. In the instant case, allegations as against the applicants are held to be proved, no case is made out. It is a case of over implication. There is no triable case against all the applicants. In view of the same, continuation of the proceedings would be the abuse of the process of the Court.

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

ORDER

- i. Criminal application is allowed in terms of prayer clause "C" and "C-1" to the extent of the applicants before us.
- ii. Criminal application accordingly disposed off.

iii. Since Advocate Mr. Rohit Patwardhan is appointed to represent the cause of respondent no.2, we quantify his legal fees and expenses @ Rs.2,000/- (Rs. Two Thousand) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(SANDIPKUMAR C. MORE, J.) (V.K. JADHAV, J.)

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