

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

CRIMINAL APPLICATION NO. 1381 OF 2020

01 Manoj s/o Uttam Mhaske;

02 Pramilabai w/o Uttam Mhaske;

03 Uttam s/o Pundlik Mhaske;

04 Vishal s/o Uttam Mhaske;

05 Pradnya w/o Vishal Mhaske;

06 Deepali w/o Rahul Jadhav;

07 Rahul s/o Pralhad Jadhav

Applicants

Versus

01 The State of Maharashtra

02 Jayshree w/o Manoj Mhaske

Respondents

Mr. Prakashsing B. Patil, advocate for the applicants

Mr. S. D. Ghayal, APP for Respondent No.1.

Mr. S. N. Pagare, advocate for Respondent No.2.

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

DATE : 13th January, 2022.

PC :

1 Leave to correct First Information Report number.

2 Learned Counsel for the applicants, on instructions, seeks leave to withdraw the application of applicants no. 1 to 5.

3 Leave granted. Application of applicant no.1 – Manoj Uttam Mhaske, applicant no.2 – Pramilabai Uttam Mhaske, applicant no.3- Uttam s/o Pundlik Mhaske, applicant no.4 – Vishal Uttam Mhaske and applicant no.5 – Pradnya w/o Vishal Mhaske, is hereby dismissed as withdrawn.

4 This application is heard finally with consent of learned Counsel for respective parties at the stage of admission.

5 Applicants are seeking quashing of the First Information Report in connection with Crime No. 89/2020, registered with Dhule Taluka Police Station, for the offences

punishable under Sections 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code and also the Criminal Proceedings bearing RCC No.433/2020, pending before the learned Judicial Magistrate, First Class, Dhule.

6 Learned Counsel for the applicants submits that applicant no.6 is the married sister-in-law of Respondent No.2 and applicant no.7 is her husband. They are residing at Sakora, whereas, matrimonial house of Respondent No.2 is situated at Manmad, Tq. Nandgaon, District Nasik. The learned Counsel submits that though names of applicants no.6 and 7 are mentioned in the First Information Report, however, allegations as against them are general in nature without attributing any specific role to them. This is the case of over implication and almost all the family members have been implicated in connection with the said crime. The learned Counsel submits that the co-accused persons, against whom allegations have been mainly made, have withdrawn their application seeking quashing of the FIR and criminal proceedings.

7 Learned Counsel for Respondent No.2 submits that names of applicants no. 6 and 7 are mentioned in the First Information Report with the specific role attributed to them. There is a triable case against both the applicants. There is no substance in the present application and the same is liable to be dismissed.

8 We have also heard learned A. P. P. for the Respondent-State.

9 We have carefully gone through the contents of the complaint and also perused the charge sheet. Though we find names of applicants no. 6 and 7 in the complaint, however, allegations against them are vague and absurd. It further appears that though their names are mentioned in the complaint, no specific incidents are quoted.

10 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.”

11 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”.

12 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.”*

13 It is well settled that if the allegations are absurd or do not make out any case, the proceedings are liable to be quashed. In the instant case, even accepting the charge sheet as it is and even if the allegations made in the complaint are

taken as proved, no case is made out against applicants no.6 and 7. There is no triable case as against applicants no. 6 and 7.

14 In view of the above discussion and in terms of the ratio laid down in the afore-cited cases, we proceed to pass the following order:

15 Criminal Application is allowed in terms of prayer clause “B” and “B-1”, to the extent of applicant no.6 – Deepali w/o Pralhad Jadhav and applicant no.7 – Rahul s/o Pralhad Jadhav.

16 Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V. K. JADHAV)
JUDGE

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