

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

962 CRIMINAL APPLICATION NO.1382 OF 2021

**SANJAY S/O BABASAHEB NIKAM AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Advocate for Applicants : Mr. K. H. Surve
APP for Respondent no.1-State: Mr. S. J. Salgare
Advocate for Respondent no.2 : Mr. T. M. Tandale

....

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

DATED : 25th JANUARY, 2022.

....

P. C. :

1. By consent of the parties, heard finally at the stage of admission.
2. The applicants / accused are seeking quashing of the F.I.R. bearing Crime No.34 of 2021, registered with Ashti Police Station, for the offence punishable under Sections 498A, 406, 323, 504 and 506 read with 34 of IPC. The applicants / accused are also seeking quashing of the proceeding bearing RCC No. 101 of 2021 pending before Judicial Magistrate (First Class), Ashti.

3. Learned counsel for the applicants submits that applicant no.1 is the brother-in-law of respondent no.2 and applicant no.2 is his wife. The allegations have been made against the husband, father-in-law and another brother-in-law and his wife. However, the allegations as against these applicants are general in nature. Learned counsel submits that applicant no.1 is in government service as a Medical Officer and in the year 2015 itself he was posted at Rural Hospital, Chinchodipatil, District Ahmednagar and after his posting he was required to stay in Government quarter allotted to him as per the Government resolution. Learned counsel submits that applicant no.1 is still in Government service. Learned counsel submits that it is a case of over implication and almost all the family members are implicated in connection with the present crime.

4. Learned counsel for respondent no.2 submits that the names of the applicants are mentioned in the F.I.R. with a specific role attributed to them. Learned counsel submits that though applicant no.1 initially posted at Chinchodipatil, however, distance between Chinchodipatil and Ashti is hardly 40 to 45 Kms. Learned counsel submits that respondent no.2 informant was subjected to cruelty on account of non-fulfillment of demand of a

huge amount for opening of a new medical store. Respondent no.2 informant was driven out from her matrimonial house after removing jewelry. There is a triable case against the applicants and co-accused persons. There is no substance in the application and same is liable to be dismissed.

5. We have also heard the learned APP for respondent no.1-State.

6. We have carefully gone through the contents of the complaint and also perused the charge sheet. Though we find the names of the applicants are mentioned in the FIR, however, allegations against them are general in nature. It further appears that the allegations have been made mainly against the co-accused persons, who are not before us as applicants. There are allegations to the effect that there was demand of certain amount for opening a new medical store by the father-in-law, by both the brother-in-laws and their respective wife. However, no specific role is attributed to these applicants by quoting specific incident. Similarly, so far as the incident dated 23/02/2020 as quoted in the complaint is concerned, the allegations are general in nature without attributing any specific individual role to these applicants. Learned counsel for the applicants has pointed out to us that the husband of

respondent no.2 has already opened an independent medical store after obtaining loan from the bank, for which respondent no.2 informant stood as a guarantor. However, we are not considering the defence of the applicants at this stage. It further appears that applicant no.2 is in the Government service right from the year 2015 posted at various places. Thus, considering the allegations as against them it appears to us that it is a case of over implication.

7. 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.”

8. 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.

9. 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.”

10. It is well settled that if the allegations are absurd and do not make out any case, the proceedings are liable to be quashed. In the instant case, even if the allegations made as against the applicants are held to be proved, no case is made against them. It appears that there is no triable case against these applicants and in view of the same, the continuation of the proceedings as against them will be an abuse of court process.

11. 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 clause "B and F".
- II) Criminal application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-