

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

964 CRIMINAL APPLICATION NO. 1921 OF 2019

SAGAR S/O. MAHENDRA JAISWAL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicants : Mr. Lavte Amar V.
APP for Respondent-State : Mr. M.M. Nerlikar
Advocate for Respondent No.2 : Mr. B. R. Waramaa

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CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 27th JANUARY, 2022

PER COURT:-

1. We have heard learned counsel for the applicants. Learned counsel, on instructions, seeks leave to withdraw the application of applicant no.1. Leave granted. The application of applicant no.1 Sagar s/o Mahendra Jaiswal (husband of respondent no.2) is hereby dismissed as withdrawn.

2. Heard finally with consent at admission stage.

3. The applicants/accused are seeking quashing of the FIR no. 180/2019 registered with Kadim Jalna Police Station for the offence punishable under Sections 498-A, 323, 504 r.w. 34 of IPC. and under

Sections 3 and 4 of the Dowry Prohibition Act 1961 and also quashing of the proceedings bearing R.C.C. No. 289 of 2019 pending before the Judicial Magistrate, First Class, Jalna.

4. Learned counsel for the applicants submits that though names of the applicants are mentioned in FIR, however, the allegations have been made mainly against co-accused husband, whose application seeking quashing of the proceedings came to be withdrawn. Learned counsel submits that general allegations have been made against the applicants without quoting any specific incident. Learned counsel submits that applicant no.4-brother-in-law is a businessman established his business at Akot, taluka Akot, District Akola and he recently got married. The allegations are vague and absurd.

5. Learned counsel for respondent no.2 submits that the names of all the applicants are mentioned in the FIR with a specific role attributed to each of them. Respondent no.2-informant was treated well for two to three months after marriage and thereafter, she was subjected to cruelty on account of the unpaid dowry. There is a triable case against the applicants. The applicants are the close relatives. There is no substance in this criminal application and the same is liable to be dismissed.

6. We have also heard learned APP for the respondent State.

7. 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 the co-accused husband whose application seeking quashing of the proceedings came to be withdrawn. It has been specifically alleged in the complaint that co-accused husband used to beat respondent no.2-informant for the reason that the father of respondent no.2 has given less amount of dowry in marriage and he has further demanded Rs.5,00,000/- to respondent no.2 to be fetched from her father. Though names of the applicants are mentioned in the FIR, however, the allegations as against them are general in nature without quoting any specific incident.

8. 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.”

9. 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.”

10. 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.”

11. It is well settled that if the allegations are absurd and no case is made out, the proceedings are liable to be quashed. In the instant case, even if the allegations are held to be proved, no case is made out. There is no triable case against the applicants. In view of the same and in terms of the ratio laid down by the Supreme Court in the above cited cases, we proceed to pass the following order:

ORDER

- I. The criminal application is allowed in terms of prayer clauses B-1 and B-2 to the extent of applicant nos. 2 to 4.
- II. The criminal application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)