

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

945 CRIMINAL APPLICATION NO.1737 OF 2021

SAURABH SURYAKANT KADAM AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Ms. Kakade (Matkar) Savita
Parmeshwar

APP for Respondent 1 : Mr. R V Dasalkar

Advocate for Respondent 2 : Mr. Bhosale M K
(appointed through Legal Aid)

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.
Dated: March 10, 2022

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PER COURT :-

1. We have heard the learned counsel for the applicants for some time. The learned counsel for the applicants, on instructions, seeks leave to withdraw this criminal application to the extent of applicant no.1, 2, 5 and 7.

2. Leave granted. Application of applicant no.1- Saurabh s/o Suryakant Kadam (husband of respondent No.2), 2-Suryakant Laxman Kadam (father-in-law of respondent no.2), 5-Kiran s/o Suryakant Kadam (brother-in-law of respondent no.2) and applicant no.-7

Vinay s/o Chandrakant Santabanavar (Shinde)
(husband of sister-in-law of respondent no.2) is hereby
dismissed as withdrawn.

3. Heard finally with consent at admission stage.

4. The applicants are seeking quashing of the FIR bearing crime no.158 of 2021 registered with Police Station Sadar Bazar, Jalna for the offence punishable under section 498-A, 354, 354-D, 504, 506, 34 of the IPC and section 3 and 4 of the Dowry Prohibition Act. Learned counsel for the applicants submits that though names of the applicants before the Court are mentioned in the FIR, however, the allegations have been made mainly against the husband, father-in-law, brother-in-law and husband of the sister-in-law, whose application seeking quashing of the FIR came to be withdrawn today. Though, names of the applicants are mentioned in the FIR, however, the allegations as against them are general in nature, without ascribing any specific individual role. Learned counsel submits that, the applicant no.3-is mother-in-law, applicant no.4 is

brother of father-in-law, applicant no.6 is wife of brother-in-law and applicant no.8 is married sister-in-law. Learned counsel for the applicants submits that there is no triable case against them. It is a case of over implication.

5. Learned appointed counsel for respondent no.2 submits that, names of the applicants before the Court are mentioned in the FIR, with the specific role attributed to each of them. Respondent no.2 was treated well for some period after marriage, however, she was subjected to cruelty by co-accused husband, for various reasons. Even though respondent no.2 has complained about the same to the present applicants, however, they have supported co-accused husband and ignored her allegations. Learned counsel submits that, there is a triable case against all the applicants. There is no substance in the criminal application and the criminal application is liable to be dismissed.

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

7. We have carefully gone through the contents of the complaint and also perused the police papers. It appears that after marriage, in the month of May, 2019 respondent no.2 went to Bangalore for cohabitation with her husband, however, she was subjected to cruelty by co-accused husband. She came to know that her husband had some extra marital relations with one Jasvir Kaur. There are serious allegations against co-accused Husband. It further appears that, there are allegations against co-accused father-in-law, co-accused husband of the sister-in-law to the extent that they tried to take undue advantage of her alleged ill-treatment at the hands of co-accused husband and tried to develop the relations with her. Though, respondent no.2 has not given any heed to their attempts, however, they have exhausted all the opportunities to touch inappropriately with some ulterior motive. So far as the applicants before this Court are concerned, allegations against them are absurd in nature.

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 “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 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.”

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 as against the applicants are held to be proved, no case is made out. There is no triable case against them. It is a case of over implication.

12. Thus, considering the entire aspect of the case and in view of the ratio laid down by the Supreme Court in the above cited cases, we proceed to pass the following order.

ORDER

1. Criminal Application is hereby allowed in terms of prayer Clause “**B**” as against the applicants before us.
2. Criminal Application accordingly disposed off.
3. Since Advocate Mr. M K Bhosale is appointed to represent 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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