

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

CRIMINAL APPLICATION NO. 1895 OF 2021

01 Javed s/o Abdulla Kazi

02 Abdulla s/o Aabu Talib Kazi

03 Dillshad Begum w/o Abdulla Kazi

04 Tarnum w/o Altaf Kazi

05 Altaf s/o Tajoddin Kazi Applicants

Versus

01 The State of Maharashtra

02 Sayyad Sabajrin w/o Javed Kazi Respondents

Mr. D. A. Madake, advocate for the applicants

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

None present for Respondent No.2.

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

DATE : 10th February, 2022.

PC :

1 Learned Counsel for the applicants, on instructions, seeks leave to withdraw application of applicants no.1 to 3 with liberty to file an application for discharge before the trial Court in the pending case.

2 Leave granted. Application of applicant no.1 – Javed s/o Abdulla Kazi (husband of Respondent No.2), applicant no.2 – Abdulla s/o Aabu Talib Kazi (father-in-law of Respondent No.2), and applicant no.3 – Dillshad Begum w/o Abdulla Kazi (mother-in-law of Respondent No.2), is hereby dismissed as withdrawn with liberty to each of them to file an application for discharge before the trial Court in the pending case before framing of the charge.

3 Criminal Application is heard finally at the stage of admission by consent of learned Counsel for respective parties.

4 Learned Counsel for the applicants submits that though names of applicant no.4 – Tarnum w/o Altaf Kazi and applicant no.5 – Altaf s/o Tajoddin Kazi are mentioned in the First Information Report, applicant no.4 - Tarnam is married sister-in-law of Respondent No.2 and applicant no.5 - Altaf is her husband and they are residing at Mangalveda, Tq. Mangalveda, District Solapur. It further appears from the complaint that the allegations made against them are general in nature without quoting any specific incident. There is no triable case against them.

5 Learned Counsel for Respondent No.2 submits that names of applicants no. 4 and 5 are mentioned in the First Information Report with specific role attributed to them. There is a triable case against them also. There is no substance in the Criminal Application and the same is liable to be dismissed.

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

7 We have carefully gone through the allegations made in the complaint and also perused the charge sheet. Though we find names of the applicants no. 4 and 5 are mentioned in the First Information Report, however, allegations against them are general in nature. Applicant no.4 is married sister-in-law of Respondent No.2 and applicant no.5 is her husband and they are residing at Mangalveda, Tq. Mangalveda, District Solapur, whereas, matrimonial house of Respondent No.2 is situate at village Apsingha, Tq. Tuljapur, District Osmanabad. It appears that all the family members of husband of Respondent No.2 have been arrayed as accused persons in connection with present crime.

8 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.”

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 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.”

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 applicants no. 4 & 5 are held to be proved, no case is made out. There is no triable case against these applicants. In view of the same, continuation of the proceedings against them will be an abuse of court process.

12 In view of the above and in view of the ratio laid down by the Hon'ble Supreme Court in the afore-cited cases, Criminal Application is allowed in terms of prayer clause "B" to the extent of applicant no.4 – Tarnum w/o Altaf Kazi and applicant no.5 – Altaf s/o Tajoddin Kazi

Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

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