

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

CRIMINAL APPLICATION NO.2202 OF 2019

**SUBHADRABAI SAMPATRAO BORSE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
CRIMINAL APPLICATION NO. 2805 OF 2019**

**DEEPALI W/O ANIL CHAVAN AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Applicants : Smt. Harshita M. Manglani
APP for Respondent nos.1 & 2-State: Mr. K. S. Patil
Advocate for Respondent no.3 : Mr. D. S. Pawar (appointed)

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

DATED : 29th MARCH, 2022.

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ORDER : (Per Sandipkumar C. More, J.)

1. By consent of the parties, heard finally at admission stage.
2. Applicants in both the criminal applications, are seeking quashing of same FIR bearing No. 11 of 2019, registered with Sailu Police Station, Taluka Sailu, District Parbhani for the offence punishable under Sections 498A, 323, 504 and 506 read with 34 of the IPC. During pendency of these applications, charge sheet

has been submitted and therefore, the applicants are also seeking quashing of the criminal proceeding bearing RCC No. 54 of 2020, pending before the learned Judicial Magistrate (First Class), Sailu.

3. Applicant Subhadrabai Sampatrao Borse in Criminal Application No. 2202 of 2019 is the mother-in-law of respondent no.3- informant, whereas applicants in Criminal Application No. 2805 of 2019 are sister-in-law and her husband. They are the accused nos.1 to 3 respectively.

4. Learned counsel for all the applicants submits that the main allegations in the FIR are against co-accused husband and his brother Sanjay, who are accused nos. 4 and 5. However, though the names of the applicants in these criminal applications are mentioned in the FIR, but the allegations against them are general in nature without ascribing any particular role. She further submits that there are allegations against these applicants that they prompted co-accused husband to ill-treat respondent no.3- informant and also told him to enquire about her so called affair through her college friend. According to the learned counsel for the applicants, the remaining allegations against these applicants, are usual in nature and even if same are held to be proved, no offence punishable under Section 498A of IPC can be made out. In addition to oral submission at bar, the learned counsel for the

applicants also submitted written submission along with certain documents and she also relied upon following judgments :

- I) *Geeta Mehrotra and others v. State of U.P. and others, reported in AIR 2013 SC 181;*
- II) *Pramod Uttam Shinde and others vs. The State of Maharashtra and others, 2015 ALL MR (Cri) 4232;*
- III) *Prameshwar Chandrakant Yenge and others vs. The State of Maharashtra and another in Criminal Writ Petition No. 01503 of 2017, decided on 20/03/2018, decided by this Court;*
- IV) *Varala Bharath Kumar and another vs. The State of Telangana and another, (2017) 9 SCC 413;*
- V) *Chandralekha and others vs. State of Rajasthan and others, 2013 Cri.LJ 3644;*
- VI) *Tukaram s/o Bhagwan Sawant and another vs. The State of Maharashtra, 2019 ALL MR (Cri) 1123;*
- VII) *Kahkashan Kausar @ Sonam and others vs. State of Bihar and others, 2022 LiveLaw (SC) 141;*
- VIII) *Kamlesh Ghanshyam Lohia and others vs. The State of Maharashtra and others in Criminal Writ Petition No. 3540 of 2019 decided on 23/08/2019 by Bombay High Court and*
- IX) *Rajiv Thapar and others vs. Madan Lal Kapoor, (2013) 3 SCC 330.*

5. On the contrary, the learned counsel for respondent no.3 strongly opposed the submissions made by the learned counsel for the applicants. He submits that there are direct allegations against these applicants in the FIR itself and specific role is also attributed to them. He further submits that from the FIR itself it is evident that the applicants herein along with co-accused, have subjected respondent no.3 informant to cruelty physically and mentally and they also did not allow to complete her education. Moreover, they also suspected on her character and beat her. As such, the learned counsel for respondent no.3 submits that the present applications are liable to be dismissed.

6. We have also heard the learned A.P.P. for respondent nos-1 & 2-State.

7. We have carefully gone through entire material on record along with charge sheet. We also perused written submissions filed on behalf of the applicants and gone through the judgments cited on their behalf.

8. On going through the judgments cited by the learned counsel for the applicants, it appears that in matrimonial proceeding, the FIR and the criminal proceeding can be quashed if it is appeared that the allegations in the FIR are of general nature.

Moreover, there appears tendency to involve the entire family members in the crime despite absence of their involvement in the same. Further, the FIR or the criminal proceeding can be quashed whether there are vague allegations made in the FIR against distant relatives of the husband by ignoring the fact that they are residing separately. In the instant case, if we go through the FIR, we find that there are allegations mainly against the husband of respondent no.3 and also his brother, who is accused no.5. However, both of them are not before this court. On the contrary, mother-in-law and sister-in-law along with her husband, are before the court. On perusal of the FIR and the charge sheet, it appears that there are specific allegations against mother-in-law Subhadrabai Borse i.e. the applicant in Criminal Application No. 2202 of 2019. It has been specifically stated by respondent no.3 informant that her husband and mother-in-law used to suspect her character and they even made enquiry to that effect by making phone call to her college friend and as such insulted her. The mother-in-law had also made accusation against her about committing theft of gold ornaments. Thus, there are direct allegations against the mother-in-law i.e. applicant in Criminal Application No. 2202 of 2019. 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 if the FIR does not disclose

commission of an offence, then only the FIR can be quashed. However, in the instant case there are direct allegations at least against the mother-in-law -Subhadrabai Borse in the FIR and therefore, the observations in the judgments relied upon by the learned counsel at least for this applicant, are not applicable.

9. So far as the applicants in Criminal Application No. 2805 of 2019 are concerned, the applicant no.1 is sister-in-law of respondent no.3, whereas, applicant no. 2 is her husband. Though the names of these applicants are mentioned in the FIR, however, the said allegations appear to be of general nature and also vague without giving details of specific day and dates. Even if the said allegations are held to be proved, then also no offence under the aforesaid sections is made out.

10. In the case of *Geeta Mehrotra (supra)*, 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.”

11. 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.”

12. 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.”

13. In the backdrop of aforesaid observations, if we peruse the FIR as well as charge sheet in the instant case, it appears that the allegations against the applicants in Criminal Application No. 2805 of 2019 are of general nature. Moreover, applicant no.1 in the said application is married sister-in-law of respondent no.3 and residing separately. No triable case is there against these applicants. Therefore, if the prosecution is allowed to be continued against these applicants, it would be an abuse of process of law. Therefore, we are inclined to quash the FIR as well as criminal proceeding against these applicants in view of the discussion made by us and in the light of observations of the

judgments cited above. However, since there are direct allegations against Subhadrabai Borse i.e. mother-in-law of respondent no.3 and the applicant in Criminal Application No. 2202 of 2019, we are not inclined to grant any relief as claimed by her. In the result we proceed to pass the following order.

ORDER

- I) Criminal Application No. 2202 of 2019 is hereby dismissed.
- II) Criminal Application No. 2805 of 2019 is hereby allowed in terms of prayer clause "B and B-A".
- III) We quantify the fees of the appointed counsel for respondent no.3 in both the criminal applications at Rs.4,000/- (Rs. Four thousand only) to be paid by High Court Legal Services Sub-Committee, Aurangabad.
- IV) Both the criminal applications are accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

vsm/-