

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

944 CRIMINAL APPLICATION NO. 3583 OF 2019

NITIN S/O. GANPAT KSHIRSAGAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Shirsat Suhas R.
APP for Respondent No.1-State : Mr. S. S. Dande
Advocate for Respondent No.2 : Mr. V. Y. Bhide

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CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 02nd FEBRUARY, 2022

PER COURT:-

1. Learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant nos. 1 and 2. Leave granted. The application of applicant no.1 Nitin s/o Ganpat Kshirsagar (husband of respondent no.2) and applicant no.2 Mandakini w/o Ganpat Kshirsagar (mother-in-law of respondent no.2) is hereby dismissed as withdrawn.
2. Leave to amend the prayer clause to insert the case number which is pending before the Magistrate.
3. Heard finally with consent at admission stage.

4. The applicant-original accused Shailesh s/o Ganpat Kshirsagar and applicant-original accused Sonam w/o Shailesh Kshirsagar are seeking quashing of the FIR vide crime no. 144/2019 registered at Akole Police Station, Akole, District Ahmednagar for the offence punishable under Sections 498A, 406, 323, 504, 506 r/w 34 of IPC and also seeking quashing of the proceedings bearing R.C.C. No. 7/2020 pending before the Judicial Magistrate, First Class, Akole.

5. Learned counsel for the applicants submits that applicant no.3 is the brother-in-law and applicant no.4 is his wife. Though their names are mentioned in the FIR, however, the allegations as against them are general in nature. Learned counsel submits that the allegations have been made mainly against co-accused Nitin (husband of respondent no.2) and co-accused Mandakini (mother-in-law of respondent no.2), whose application seeking quashing of the proceedings came to be withdrawn today. Learned counsel submits that though certain instances are quoted, however, no specific individual role is ascribed to the present applicants and general allegations have been made against them by referring their names along with co-accused persons. Learned counsel submits that it is a case of over-implication and all the family members have been

implicated in connection with the crime.

6. Learned counsel for respondent no.2 submits that respondent no.2 got married with co-accused Nitin way back in the year 2013. She was treated well for the initial period of three years. However, thereafter she was subjected to ill-treatment on account of non-fulfillment of demand of Rupees five lakh for the purpose of purchasing a flat. Learned counsel submits that there are allegations against these applicants that they have also joined the other co-accused persons to make demand of the said amount and also subjected respondent no.2 to cruelty on account of non-fulfillment of the said demand. Furthermore, as per the allegations made in the complaint, the applicants all the while were subjecting respondent no.2 to scolding, abuses and beating. Moreover, they used to instigate co-accused persons and as a result thereof, respondent no.2 was subjected to beating by the co-accused persons. Learned counsel submits that there is a triable case against these applicants. There is no substance in this criminal application and the same is liable to be dismissed.

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

8. We have carefully gone through the allegations made in the complaint so also perused the charge-sheet. It appears that the allegations have been made mainly against co-accused husband and mother-in-law, whose application seeking quashing of the proceedings came to be withdrawn today. Though names of the applicants are mentioned in the complaint, however, the allegations as against them are general in nature without quoting any specific incident or ascribing any specific individual role.

9. 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.”

10. 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”.

11. In the case of ***Taramani Parakh v. 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.”*

12. In the instant case, the allegations as against the applicants are absurd in nature. It is well settled that if the allegations are absurd and no case is made out, the proceedings are liable to be quashed. Even though the allegations made against these applicants are held to be proved, no case is made out. In view of the same, continuation of the proceedings against these applicants would be an abuse of the court process. There is no triable case against these applicants.

13. In view of the above 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 hereby allowed in terms of prayer clauses (B) and (B-1) to the extent of applicant nos. 3 and 4.

II. The criminal application is accordingly disposed off.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)