

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
57 CRIMINAL APPLICATION NO.3724 OF 2019

SALMAN S/O. JAMAL KHAN PATHAN AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...

Advocate for Applicants : Mr. G. R. Syed
APP for Respondents: Ms. P.V. Diggikar.

CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.
DATE : 7TH MARCH, 2022.

PER COURT:

1] Hearing finally by consent of learned counsel for the parties at admission stage.

2] The applicants are seeking quashing of FIR bearing Crime No. 148 of 2019 registered with police station, Shirur-Anantpal, Taluka Latur, Dist. Latur for the offences punishable under Section 498(A), 323, 504, 506, 34 of Indian Penal Code, 1860.

3] The learned counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant No.1 Salman Pathan.

Leave granted.

The application of applicant No.1 - husband of respondent No.2 is hereby dismissed.

4] The learned counsel for the applicants submits that, so far as the other applicants before this court are concerned, though their names are mentioned in the FIR, the allegations against them are general in nature, without quoting any specific incident.

5] The learned counsel further submits that, even in the charge sheet, nothing has been revealed. There are allegations mainly against the husband, whose application for seeking quashing of the proceeding came to be withdrawn. The learned counsel for applicants submits that the applicant Nos. 4 to 6 are married sisters in law residing at different places alongwith their husband. Applicant Nos. 2 and 3 are aged parents in law.

6] Learned counsel for the respondent No.2 submits that, the names of the applicants are mentioned in the FIR with specific allegations against each of them. It has been alleged in the complaint that after marriage, the respondent No.2 was treated well for about six months and thereafter the ill-treatment started for non-fulfilment of the demand for purchase of a four wheeler and cash amount of Rs. 4 Lakhs for the marriage of sisters in law. There are allegations that alongwith co-accused husband, the applicants herein have also subjected the respondent No.2 to cruelty and even she was driven out of the house. Since 10th September, 2019, the respondent No.2 is residing with her parents. There is triable case against all the applicants. There is no substance in this criminal application and the same is liable to be dismissed.

7] We have heard the learned APP for the respondent State. We have carefully gone through the contents of the complaint and also perused the charge sheet. Though the names of applicants are mentioned, the allegations are general and absurd in nature. It has been simply alleged in the complaint, so also, nothing more has been revealed

in the investigation that the respondent No.2 was subjected to cruelty on account of non-fulfillment of certain demands. It further appears that the allegations are mainly against respondent No.1, whose application seeking quashing of proceeding came to be withdrawn. There are allegations that accused were suspecting about the character. However, in all probability, those allegations must have been made against co-accused husband.

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 in nature and no case is made out, the proceeding are liable to be quashed. In the instant case, even if the allegations as against the applicants are held to be proved, there is no triable case made out against the applicants.

12] Thus, considering the entire aspects of the matter and in view of the ratio laid down by the Apex Court in the cases cited supra, we proceed to pass the following order.

:-O R D E R:-.

[I] Criminal application is allowed in terms of prayer clause [10-BB] to the extent of the applicants before us, except the applicant No.1, whose application is disposed of as withdrawn.

[II] Criminal application is accordingly disposed of.

[SANDIPKUKAR C. MORE]
JUDGE

[V.K. JADHAV]
JUDGE.

grt/-