

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

CRIMINAL WRIT PETITION NO. 1854 OF 2019

01 Shriram s/o Govindrao Bondre;

02 Sunita w/o Shriram Bondre;

03 Neeraj s/o Shriram Bondre;

04 Anandinath s/o Namdeo Phulwadkar;

05 Vaishali w/o Anandinath Phulwadkar. Petitioners

Versus

01 The State of Maharashtra

02 Renuka w/o Nitin Bondre Respondents

Mr. A. J. Bhat, advocate for the petitioners.

Mrs. D. S. Jape, APP for Respondent No.1.

Mr. Ram Shinde, advocate for Respondent No.2.

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

DATE : 01st February, 2022.

PC :

1 Learned Counsel for the petitioners, on instructions, seeks leave to withdraw the petition on behalf of petitioner no.1 - Shriram Govindrao Bondre (father-in-law of Respondent No.2) and petitioner no.2 - Sunita w/o Shriram Bondre (mother-in-law of Respondent No.2).

2 In view of the above, petition of petitioner no.1 - Shriram Govindrao Bondre (father-in-law of Respondent No.2) and petitioner no.2 – Sunita w/o Shriram Bondre (mother-in-law of Respondent No.2) is hereby dismissed as withdrawn.

3 Learned Counsel for the petitioners submits that allegations have been mainly made against co-accused Nitin – husband, Shriram – father-in-law and Sunita – mother-in-law of Respondent No.2. Co-accused Nitin (husband of Respondent No.2) has not filed any application for quashing of the proceedings. However, co-accused Shriram - father-in-law and Sunita – mother-in-law of Respondent No.2 (Petitioners No.1 and 2 herein) have withdrawn their petition seeking quashing of the proceedings.

4 Learned Counsel for the petitioners submits that petitioner no.3 Neeraj is brother-in-law of Respondent No.2, petitioner no. 4 - Anandinath is maternal uncle of husband of Respondent No.2 and petitioner no. 5 – Vaishali is wife of petitioner no.4. Though their names are mentioned in the First Information Report, allegations made against them are general in nature without quoting any specific incident. It is a case of over

implication.

5 Learned Counsel for Respondent No.2 submits that Respondent No.2 was treated well for few days after marriage and thereafter ill-treatment was started to her on account of demand of Rs.50 lakhs for construction business. The learned Counsel submits that petitioner no.3 – Neeraj, brother-in-law of Respondent No.2 is also doing construction business along with co-accused Nitin (husband of Respondent No.2). The learned Counsel submits that petitioners no.3, 4 and 5 used to instigate co-accused and as a consequence thereof, Respondent No.2 was subjected to cruelty. Even on 01.07.2019, Respondent No.2 was driven out from her matrimonial house and she was required to go to her maternal house alone. Even though Respondent No.2 and her parents have made efforts for restitution of cohabitation, however, the petitioners and co-accused persons have not given any response. The learned Counsel submits that the petitioners and co-accused persons are not ready for further cohabitation unless and until Respondent No.2 fulfills their demand. There is a triable case against petitioners no.3, 4 and 5. There is no substance in this petition 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 contents of the complaint and also perused the charge sheet. Though we find that names of petitioners no.3, 4 and 5 are mentioned in the First Information Report, however, allegations against them are general in nature without quoting any specific incident. It further appears that the allegations are made mainly against co-accused husband, father-in-law and mother-in-law and they are not before us seeking quashing of the proceedings. Petitioner no.3 is brother-in-law of Respondent No.2 and Petitioner no.4 is the maternal uncle of husband of Respondent No.2 whereas, petitioner no.5 is his wife. Though learned Counsel for Respondent No.2 has vehemently submitted that petitioner no.3 – Neeraj is also doing the construction business along with co-accused husband, however, there are no allegations in the complaint to that effect and even the said allegation has also not been revealed during the course of the investigation. Thus, allegations against petitioner no.3, petitioner no.4 and petitioner no.5 are absurd in nature.

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 do not make out any case, the proceedings are liable to be quashed. In the instant case, the allegations as against petitioners no. 3, 4 and 5 if accepted as it is and those are held to be proved, no triable case is made out against these petitioners. In view of the same, continuation of the proceedings would be an abuse of process of Court.

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, we proceed to pass the following order:

(i) Criminal Writ Petition is allowed to the extent of petitioner no.3 Neeraj s/o Shriram Bondre, petitioner no. 4 – Anandinath s/o Namdeo Phulwadkar and petitioner no. 5 – Vaishali w/o Anandinath Phulwadkar, in terms of prayer clause “A”

and “C-1” of the petition.

13 Criminal Writ Petition is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V. K. JADHAV)
JUDGE

adb