

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

967 CRIMINAL APPLICATION NO.3478 OF 2018

SHAIKH ISMAIL S/O. SHAIKH IBRAHIM AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANR

Mr.H.I. Pathan, Advocate for the applicants.
Mr.S.S. Dande, APP for the respondent/State.
Mr.B.N. Gadegaonkar, Advocate for respondent No.2.

CORAM : V.K. JADHAV &
SANDIPKUMAR C.MORE, JJ.
DATED : 29.03.2022

PC :-

01. Leave to add pending case number and the Court before whom the case is pending in the amended prayer clause "B-1".

02. Heard finally with consent of learned Counsels for the parties at the admission stage.

03. The applicants are seeking quashing of FIR in Crime No.270 of 2018 registered with Police Station Itwara, Nanded for the offences punishable under sections 498(A), 323, 504, 506 read with section 34 of the Indian

Penal Code and also quashing of the proceedings bearing RCC No.72 of 2019 pending before the Vth Judicial Magistrate, First Class, Nanded.

04. Learned counsel for the applicants submits that though name of the applicants are mentioned in the FIR, however, allegations as against them are general and absurd in nature. Learned Counsel submits that almost all the family members have been implicated in connection with present crime. This is a case of over-implication. Learned Counsel submits that applicant No.1 is brother-in-law, applicant No.2 is his wife, applicant No.3 is brother-in-law and applicant No.4 is his wife. Applicant No.5 is brother-in-law and applicant No.6 is his wife and applicant No.6 is mother-in-law.

05. Learned Counsel for respondent No.2 submits that names of the applicants are mentioned in the FIR with specific allegations against them. Learned Counsel submits that respondent No.2-informant was subjected to

ill-treatment on account of non-fulfillment of demand of Rs.10 lakhs for opening a new clinic. On 04.02.2018, respondent No.2 was subjected to beating by all the applicants and co-accused husband and she was driven out of the house. There are specific allegations in the complaint that on 05.09.2018 all the applicants along with co-accused husband had been to her parents' house and abused her and further refused to co-habit her till their demand is not fulfilled.

06. We have also heard learned APP for the respondent/state. We have carefully gone through the contents of the complaint so also perused the charge-sheet.

07. As per the allegations made in the complaint, marriage had taken place on 13.08.2007 and from the year 2018 respondent No.2 was allegedly subjected to ill-treatment on account of non-fulfillment of demand of Rs.10 lakhs. Though names of applicants are mentioned in

respect of said demand and ill-treatment allegedly extended on account of non-fulfillment of the demand, no individual role has been stated nor revealed during the investigation. The allegations appears to be general in nature. Further more the allegations are also absurd for the simple reason that from 2007 to 2017 respondent No.2 was not subjected to ill-treatment on account of any demand. Even in the incident dated 04.02.2018 the allegations are general in nature and mainly against co-accused husband who allegedly extended beating to respondent No.2 and driven her out. So far as incident allegedly occurred on 05.09.2018 is concerned, except name of applicants, no individual role has been ascribed.

08. 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 "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."

09. 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 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 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."

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, even if the allegations as against these applicants are accepted as it is and held to be proved, no case is made out. The

allegations are absurd in nature. It is a case of over implication, since almost all the family members have been implicated in connection with present crime. In view of the same, continuation of the proceedings in terms of the said allegations would be an abuse of process of law.

12. In view of above and in terms of ratio laid down by the Supreme Court in above cited case, we proceed to pass following order :-

O R D E R

(i) The Criminal Application is allowed in terms of prayer clauses (B) and (B-1) to the extent of applicants before us.

(ii) The Criminal Application is accordingly disposed of.

[SANDIPKUMAR C. MORE,J.]

[V.K. JADHAV,J.]