

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

951 CRIMINAL APPLICATION NO.4300 OF 2019

Irfan Imam Shah and others

Applicants

Versus

The State of Maharashtra and
another

Respondents

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Mr. S.B. Choudhari, Advocate for the applicants.
Smt. P.V. Diggikar, A.P.P. for respondent No. 1- State.
Mr. Sachin Jaiswal, Advocate for respondent No. 2.

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

DATE : 22-03-2022.

P.C. :

1. Learned Counsel for the applicants, on instructions, seeks leave to withdraw the application of applicant Nos.1 to 3.

2. Leave granted.

3. Application of applicant No.1 Irfan Shah Imam Shah (husband of respondent No. 2.), applicant No.2 Imam Shah Budhan Shah (father-in-law of respondent No.2) and applicant No. 3 Shahnaz Bi Imam Shah (mother-in-law of respondent No. 2) is hereby dismissed as withdrawn.

4. Heard finally with consent at the admission stage.
5. Learned Counsel for the applicants submits that during pendency of this criminal application, applicant No.6 Afsana Bi died. Learned Counse, thus, seeks leave to delete the name of applicant No. 6.
6. Leave granted.
7. Name of applicant No. 6 be deleted from the array of the applicants.
8. The applicants - accused are seeking quashing of the F.I.R. bearing Crime No. 458/2019 registered with Jinsi Police Station, Aurangabad and consequential criminal proceedings bearing R.C.C. No. 1551/2020 pending before the learned 2nd Judicial Magistrate, First Class, Aurangabad for the offences punishable under Sections 498-A, 323, 504 read with Section 34 of the Indian Penal Code.
9. Learned Counsel for the applicants submits that though the names of the applicants are mentioned in the F.I.R., however, the allegations as against them are general in nature without quoting any specific incident to the extent of

their individual role. Learned Counsel submits that applicant Nos.4 and 5 are married sisters-in-law residing at different places, applicant Nos. 7, 8 and 10 are distant relatives and applicant No. 9 is the husband of applicant No. 5. Learned Counsel submits that it is a case of over implication.

10. Learned Counsel for respondent No. 2 submits that respondent No. 2-informant was treated well for a period of 9 months after the marriage, but thereafter she was subjected to ill-treatment for various reasons by all the applicants and co-accused persons. The applicants have also made unlawful demand on certain amount and extended beating to respondent No. 2 on account of non-fulfillment of the said demand. Learned Counsel for respondent No. 2 submits that respondent No.2 has quoted the incident dated 27.04.2018 and further the incident after 14.11.2018. Learned Counsel submits that the allegations have made against all the applicants and co-accused persons by quoting specific incident. There is triable case against all the applicants. There is no substance in the criminal application and the criminal application is liable to be dismissed.

11. We have also heard learned A.P.P. for respondent No.1 – State.

12. We have carefully gone through the contents of the complaint and also perused charge-sheet. Though we find names of the applicants in the F.I.R., however, the allegations have been made mainly against co-accused husband, father-in-law and mother-in-law whose application seeking quashing of F.I.R. and proceeding came to be withdrawn. Though there are two incidents quoted in the F.I.R. i.e dated 27.04.2018 and the second incident is after 14.11.2018, however, the allegations hardly attract the provisions of Section 498-A of I.P.C. against the applicants before us. So far as the incident dated 27.04.2018 is concerned, it has been alleged that the co-accused husband, mother-in-law and applicant Nos. 4 and 5 removed the ornaments from the person of respondent No.2 and thereafter the other applicants came there in their house due to the said incident. There are general allegations that respondent No. 2 subjected to abuses and slaps and further she was driven out from the house. However, except giving names of the applicants, no individual role has been ascribed to them. The allegations are not only general in nature, but absurd in nature. So far as the second incident is concerned,

after 14.11.2018, respondent No. 2 has resumed her cohabitation and she was allegedly subjected to ill-treatment because she gave birth to a female child. However, there are general allegations stating therein that she was subjected to ill-treatment and driven out from the matrimonial home without taking the names of any accused person.

13. 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.*”

14. 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”.

15. In the case of ***Taramani Parakh v. State of Madhya Pradesh and others***, reported in (2015) 11 SCC 260, in paragraph Nos.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.”

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.”*

16. It is well settled that if the allegations are absurd and no case is made out, the proceedings are liable to be quashed. In the instant case, even if the allegations as against these applicants are held to be proved, no triable case is made out against them. It further appears that all the family members have been implicated in connection with this

crime and even distant relatives are also not spared. It is a clear-cut case of over-implication.

17. In view of the above and in terms of the ratio laid down by the Supreme Court in the above-cited cases, we are inclined to quash the proceedings as against these applicants. Hence, we pass the following order.

ORDER

- (i) Criminal Application is hereby allowed to the extent of applicant Nos.4, 5, 7, 8, 9 and 10 in terms of prayer clauses [B] and [B-1].
- (ii) Criminal Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)