



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 184 OF 2022

- 1) Chaitali W/o Nandkishor Kulat
Aged about 34 years, Occu. - Housewife,
- 2) Nandkishor S/o Shivcharan Kulat,
Aged about 40 years, Occu. - Service,
Both R/o Punda,
Tq. Akot, District Akola.

.... **APPLICANTS**

// VERSUS //

- 1) The State of Maharashtra,
Through Police Station Officer,
Police Station Mangrulpir,
District Washim.
- 2) Shubhangi W/o Nagesh Gawande,
Aged about 33 years, Occu.- Housewife,
R/o. Wanoja, Tq. Mangrulpir,
District Washim.

.... **RESPONDENTS**

Mr. A.M. Tirukh, Advocate for applicants.
Mr. S.S. Doifode, Additional Public Prosecutor for respondent
No.1.
Mr. S.K. Jagirdar, Advocate for respondent No.2.

**CORAM : NITIN W. SAMBRE AND
VALMIKI SA MENEZES, JJ.**

DATED : 13.09.2023

ORAL JUDGMENT : (Per Nitin W. Sambre, J.)

1. Heard Mr. A.M. Tirukh, learned counsel for the applicants,
Mr. S.S. Doifode, learned Additional Public Prosecutor for respondent
No.1 and Mr. S.K. Jagirdar, learned counsel for respondent No.2.

2. Prayer is for quashing of First Information Report in Crime No.8/2022, registered with Police Station, Mangrulpir, District Washim on 03.01.2022 for an offence punishable under Sections 498-A, 354-A and 354-D read with Section 34 of the Indian Penal Code.

3. The genesis of the offence is the respondent–complainant married to Nagesh, brother of the applicant No.1 on 23.05.2013. The applicant No.2 is husband of the applicant No.1. It is informed that applicant No.2 is discharging duties with the Police Department.

4. Out of matrimonial discord, the respondent–complainant initiated proceedings under Domestic Violence Act. In this background, the matter was referred for mediation by this Court. It is informed that mediation failed.

5. The genesis of the offence is the applicants are husband and wife. Both the applicants used to abuse the respondent No.2–complainant and also issued threats.

6. In the above said background, the contentions of the counsel for the applicants are the FIR against the applicants is based on non specific, general, vague and omnibus allegations. Relying on the judgment of the Apex Court in the case of ***Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others***, reported in ***2022 LiveLaw SC***

141, the prosecution based on such general and vague allegations, the prosecution cannot be said to be sustained.

7. So as to substantiate the contention, the learned counsel for the applicants has invited our attention to the allegations made against the applicants in the FIR. His further contentions are, all the relatives of the husband are implicated as accused with vague and general allegation. It is also claimed that applicants are falsely implicated.

8. While countering the aforesaid submissions, learned counsel for the respondent No.2 Mr. Jagirdar, supported by learned APP Mr. Doifode, would urge that this Court is not required to appreciate the truthfulness of the allegations in the FIR. According to them, the contents in the FIR discloses cognizable offence. The applicants, based on the material collected during investigation, came to be charge-sheeted.

9. We have appreciated the aforesaid submissions.

10. The relationship between the parties is not in dispute. The applicant No.1 is the sister-in-law of respondent-complainant, whereas the applicants are wife and husband respectively.

11. We have perused the complaint lodged by the respondent. The respondent has implicated all the family members who are directly or indirectly related with the husband. The accused are husband, father and mother-in-law, sister and brother-in-law and cousin father-in-law and mother-in-law, total 10 accused persons.

12. The complaint speaks of utterance in chorus by all the accused persons against the respondent No.2-complainant. So also, the ill-treatment meted out by all the accused persons.

The applicant No.1 – sister-in-law of the respondent-complainant claimed to have uttered the word in chorus along with father-in-law and mother-in-law etc., by using filthy words. No specific instance to that effect is narrated, but for general allegations. Similar is the allegation against the applicant No.2. Non specific allegations are made against both the applicants in the complaint. All the allegations are general, non-specific and vague in nature which are claimed to be causing ill-treatment and cruelty to the respondent.

13. The facts remains that the respondent-complainant was married to the brother of applicant No.1 on 23.05.2013. On 18.08.2015 she is blessed with a son, who is in her custody.

14. Even if the statements of the witnesses are perused and considered as it is, still the same does not speak of any specific instance

so as to pinpoint the involvement of the applicants in the offences. Out of matrimonial discord, the complainant has already initiated proceedings under Domestic Violence Act being D.V. Case No.03/2022.

15. The Apex Court in the matter of ***Geeta Mehrotra and another Vs. State of Uttar Pradesh and another*** reported in ***(2012) 10 SCC 741***, had considered the effect of casual references to family members in the FIR which has resulted into adding them as accused. The Apex Court has held that absence of specific allegation and *prima facie* case against the accused warrants and justifies the exercise of inherent powers under Section 482 of the Code of Criminal Procedure(Cr.P.C.). The Apex Court has held that the allegation has to be specific and the disclosure of same should result in the active involvement of the accused. In case, if large number of family members have been included in FIR by casually mentioning their names and contents does not disclose their active involvement, the cognizance against such family members cannot be justified. Reliance can be placed on the aforesaid judgment of the Apex Court on para Nos.18, 20 and 25, which read thus :-

“18. Their Lordships of the Supreme Court in Ramesh v. State of T.N., (2005) 3 SCC 507, had been pleased to hold that the bald allegations made against the sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband’s relatives as possible. It was held that neither

the FIR nor the charge-sheet furnished the legal basis for the Magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge-sheet, none of the alleged offences under Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister-in-law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.

20. *Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.*

25. *However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the*

legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognisance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant wife. It is the well-settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing, especially 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 overimplication 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.”

16. Similarly in the matter of ***Preeti Gupta and another Vs. State of Jharkhand and another***, reported in ***(2010) 7 SCC 667***, the Apex Court has held that general allegations are made in the complaint without visualizing the consequences of the same and the agony and pain to be suffered by the family members of the husband needs to be appreciated by taken into account. Para Nos.34 and 36 of the said Judgment read thus :-

“34. *Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such*

complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

17. Apart from above, the Apex Court has held that the criminal trial lead to immense sufferings and even if ultimately the accused persons are acquitted after facing trial, they are unable to wipe out the deep scars of suffering of ignominy. Para 37 of the said judgment which read thus :-

37. *Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for*

the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.”

18. Even if, the learned counsel for the respondent No.2 has drawn support from the judgment of this Court in the case of ***Rajesh S/o Himmat Pundkar and others Vs. State of Maharashtra and another*** in *Criminal Application (APL) No.233/2022*, decided on 08.06.2022, so as to substantiate his claim as to absence of presumption of innocence of the accused persons who are relatives of the husband of respondent-complainant, however, this Court is equally required to be sensitive to the nature of allegations against the petitioners.

19. Perusal of the FIR, it depicts that vague, general, non specific and omnibus allegations are made by the respondent-complainant against not only the applicants but also the distance relatives of her husband. Such allegations are at all not substantiated by any material. It also contains exaggerated various of the incidents. The applicants were not leaving with the complainant.

20. Based on such vague allegation, if the applicants are made to face the trial, same will not only result in immense suffering but will also left deep scars of suffering ignominy.

21. As such, in our opinion, the case of the applicants is squarely covered by the Judgment of the Apex Court in the case of ***Kahkashan Kausar @ Sonam*** (supra). The facts remains that the allegations against the applicants even if for accepted at this stage, which are vague in nature, may not be to the conviction of the applicants, if the prosecution is permitted to be continued.

22. In that view of the matter, we are of the view that the prosecution against the applicants is not sustainable. As such, the present application stands allowed in terms of prayer clause (i) of the petition. No costs.

(VALMIKI SA MENEZES, J.)

(NITIN W. SAMBRE, J.)