

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 1354 of 2022**

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CHETAN SHAMBHU DAYAL AGRAWAL
Versus
STATE OF GUJARAT

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Appearance:
MR BOMI SHETHNA WITH MR SHUBHAM K PRAJAPATI(10761) for the
Applicant(s) No. 1,2,3,4
KRUNAL V BHAVSAR(9572) for the Respondent(s) No. 2
MS CM SHAH APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 08/02/2024

ORAL ORDER

1. By invoking inherent powers of this Court under Section 482 of the Cr.P.C., the applicants, who are husband and relatives of the private respondent, seeking quashing of the questioned **FIR being CR. No. 11191003220013 of 2022 registered with Khokhra Police Station, Ahmedabad**, for the offences punishable under Section 498, 294(b), and 114 of the Indian Penal Code read with Sections 3 and 7 of the Dowry Prohibition Act, 1961.

2. Mr. Bomi Shethna, learned counsel appearing for and on behalf of the applicants upon instructions, does not press this petition qua applicant no.1 - Chetan

Agarwal, who is the husband of second respondent - wife. The petition qua husband stands dismissed as not pressed.

3. Brief facts leading to file the present application are that, the marriage of the second respondent with Chetan Agarwal was solemnized on 06.03.2018 at Madhya Pradesh. The second respondent wife belongs to Ahmedabad. After one month of the marriage, the parties came to Ahmedabad and initially lived in a rented premises and lastly, in the year 2019, shifted in their own flat at Ahmedabad. The questioned FIR is being lodged on 02.01.2022. The second respondent - wife has alleged that, she was subjected to mental and physical torture by husband and his relatives as they are not happy with the dowry given by her parents. That the husband and in-laws used to force her to bring Rs.10 lakhs from her parental home. That, despite the substantial amount given by her parents to purchase the flat, the husband and in-laws pressurized the wife to transfer the said flat in their names. In such circumstances, the questioned FIR came to be lodged against husband, mother-in-law and two brothers for the aforesaid offences.

4. In the aforesaid background facts, the applicants are before this Court, inter-alia stating that, the applicants have never shared the house with the wife and due to internal matrimonial dispute with the husband, they have been falsely implicated in the alleged offence and thus, the proceedings would nothing but sheer misuse of process of law and court.
5. Mr. Shethna, learned counsel for Mr. S.K. Prajapati has submitted that, the applicants are permanent residents of Madhya Pradesh. That, after one month of the marriage, the second respondent and the husband Chetan came to Ahmedabad and lived together in a rented premises. That, the matrimonial dispute cropped up when the name of the applicant's brother was considered by the family for companionate appointment as the father Shambhu Dayal Agarwal being a Government servant, died during the course of employment. That, vide complaint dated 05.01.2020, the husband filed a complaint, addressed to Khokhra Police Station, against the second respondent and her family members for giving threat to dispossess him from the flat property.
6. In the aforesaid factual background facts, learned counsel Mr. Shethna would urge that, the FIR has

been filed with oblique motive and to defame the applicants in their society and thus therefore, on reading of the allegations made in the FIR, no offence is made out as the allegations are vague and general and no any specific instances of harassment is being disclosed so far as role attributable to present applicants are concerned. In such circumstances, he would urge that the continuation of the proceedings which has been instituted with malafide, would an abuse of process of court and law and this is a fit case to exercise the inherent powers.

7. Opposing the application, learned counsel Mr. Bhavsar has submitted that, the disputed question of facts is raised herein, cannot be examined at this stage in a quashing petition and therefore, once the allegations made in the FIR disclosed the commissions of an offence, the Court may not examine the genuineness or reliability of the allegations made in the FIR. In such circumstances, he would urge that, no any exceptional circumstances exists to exercise the inherent powers of this Court and thus, therefore no case is made out to quash the questioned FIR.
8. The scope and power of the High Court to quash the first information report is well settled. The power

under Section 482 of the Code has to be exercised sparingly and cautiously to prevent the abuse of process of Court and to secure the ends of justice. The High Court should refrain from giving a prima-facie decision, unless there are compelling circumstances to do so. Taking the allegations, as they are, without adding or subtracting anything, if no offence is made out, only then, the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 of the Cr.P.C.

9. The Apex Court in case of State of Haryana vs. Bhajan Lal reported in (1992) Supp 1 SCC 335 has laid down the guidelines that must be adhered to while exercising inherent powers under Sections 482 of the Code to quash the criminal proceedings. The relevant paragraph reads thus:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of

illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- (1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose*

the commission of any offence and make out a case against the accused.

(4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly*

attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. Since the FIR in question emanates from matrimonial disputes. Recently, the Apex Court in case of Kakhshan Kausar @ Sonam & Ors. Vs. State of Bihar & Ors. reported in (2022) 6 SCC 599 held and observed that, in recent times, matrimonial litigation in the country has increased significantly which led in an increased tendency to employ provision such as 498A Indian Penal Code as instruments to settled personal scores against the husband and his relatives. In para-17 of the judgment, it is observed that:

"17. this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analyzing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus

allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”.

11. In matrimonial case, the Apex Court in the case of Preeti Gupta and another vs. State of Jharkhand and another reported in (2010) 7 SCC 667 observed that, a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that, exaggerated version of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in very large number of cases.
12. It is not in dispute that the marriage of the second respondent and the accused no. 1 was solemnized on 06.03.2018 and after one month of the marriage, they came to Ahmedabad and lived together either in rented premises or in their own house. The applicants are in-laws and permanent resident of Vijaypur, Dist.: Sheopur, Madhya Pradesh. On scrutiny of the allegations, in so far as applicants are concerned, this Court is of considered view that, they have been

falsely implicated in the alleged offence due to serious matrimonial dispute of the husband and wife. After one month of the marriage and till registration of the FIR, the applicants did not share and/or live the house at Ahmedabad. The record indicates that before the registration of the FIR, the community people at Madhya Pradesh tried to resolve the matrimonial dispute and accordingly compromise was arrived by executing the compromise deed and thereafter again, the dispute arose with the husband. In light of the peculiar facts and circumstances of the present case and considering the vague and general allegations in relation to the harassment and demand of dowry, this Court comes to a conclusion that the allegations contained in the FIR even if given face value and taken to the correct in their entirety, disclosed no offence qua the applicants.

13. For the aforementioned reasons, the case is fully covered by the categories (i) and (vii) as enumerated by the Apex Court in the case of State of Haryana Vs. Bhajanlal and therefore, this Court is convinced that the continuation of the criminal proceedings would be an abuse of process of the Court and law.
14. Resultently, the application succeeds. **FIR being CR. No. 11191003220013 of 2022 registered with**

Khokhra Police Station, Ahmedabad, and other consequential proceedings thereto are quashed and set aside.

15. The views expressed hereinabove are confined to the case of present applicants herein. The trial Court shall decide the case of the husband in accordance with law without being influenced by the observations made hereinabove.

(ILESH J. VORA,J)

P.S. JOSHI