

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 12950 of 2022**

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BANSILAL MAFATBHAI KHARVA & ORS.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR P P MAJMUDAR(5284) for the Applicant(s) No. 1,2,3,4,5

MS CM SHAH APP for the Respondent(s) No. 1

TAHIR S SAIYED(8983) for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA**Date : 21/02/2024****ORAL ORDER**

1. By invoking inherent powers of this Court, the applicants – original accused, who are facing the charges for the offences of cruelty and demand of dowry have preferred this application for quashing of the **FIR being CR No.11196015220606 of 2022 registered with Navapura Police Station, Dist.: Vadodara City**, for the offences 498A, 323, 294(B) and 114 of Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act.
2. Brief facts emerges from the record are that the applicants are father-in-law, mother-in-law, sisters-in-law and husband of the sister-in-law of the second respondent – Madhuriben Kharva. The marriage of the

second respondent with Mr. Jignesh Kharva was solemnised on 06.02.2011 and thereafter, she went to matrimonial home at Vadodara. It is alleged in the FIR that, she has been subjected to cruelty by the husband and his relatives and more particularly, after the birth of the daughter, she had been harassed on the household works. The second allegation made in the FIR is that, the applicants demanded a dowry and always on that issue, hurled abusive and tortured her. In such circumstances, she was compelled to leave the matrimonial home and since 2018, she is residing at her parental home.

3. In the aforesaid facts and circumstances, the questioned FIR was being lodged against the entire family members for the act of cruelty and demand of dowry.
4. This Court has heard learned counsel Mr. P.P. Majmudar, Ms. C.M. Shah, learned Additional Public Prosecutor and Mr. Tahir S. Saiyed for the respective parties.
5. Mr. P.P. Majmudar, learned counsel has submitted that, the FIR lacks the ingredients of offence alleged and allegations made are absurd and inherently improbable in the present case and further, he would

submit that, the allegations made in the complaint do not disclose the offence alleged and no case is made out against the applicants. Thus, therefore, he would urge that, the implication of the applicants being made in a casual manner with oblique motive and same deserves to be quashed and set aside.

6. In the aforesaid contentions, the learned counsel Mr. Majmudar has submitted that, the FIR qua the applicants is absolutely false and frivolous and on reading of it, the offence of cruelty and demand of dowry is clearly not made out, as, the allegations are totally vague and general in nature and having been alleged with a view to harass the applicants and thus, therefore, the institution of the FIR, implicating the applicants, would amount to sheer abuse of process of law and court and same deserves to be quashed and set aside.

7. Mr. Tahir Saiyed, learned advocate has submitted that, the High Court at this stage, would not ordinarily entered into a disputed question of fact and therefore, if the allegations made in the FIR disclosed the commission of offence, the court may not quash it and allowed the investigation to be continued in the matter.

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 **Kahkashan 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. Having heard the learned counsel for the respective parties, the issue falls for my consideration is whether the case is made out for quashing the criminal proceedings by invoking the inherent powers of this Court.
12. The husband Jignesh Kharva is not before this Court. The sister-in-law namely Kirti Dipal is living with her husband at her matrimonial home. It is not in dispute that, since 2018, the second respondent wife is living at her parental home. The husband Jignesh by public notice, informed to all that, since 2018, his wife has

left at her matrimonial home and living separately with her parents. The questioned FIR is filed on 24.11.2022. In this background facts, this Court is of the considered view that, the allegations of harassment made against the applicants are seems to be false and having been made with oblique motive and to harass the applicants. The implication of two sisters-in-law would itself speak the attitude and conduct of the wife in lodging the false FIR. The allegations of the cruelty are general in nature and there is no any specific instances being disclosed in relation to the demand of dowry and cruelty. It needs to be noted that, since 2018 to 2022, the second respondent set silent and did not initiate any action against the applicants with respect to alleged harassment and demand of dowry and that too, without any explanation on this aspect, the FIR being registered.

13. For the reasons recorded, this Court is convinced that, the implication of the applicants in the questioned FIR would amount to misuse of process of law and it is well settled that, the power under Section 482 has to be exercised by the High Court, inter-alia to prevent abuse of process of any court or otherwise to secure ends of justice and it is boundant duty of the constitutional Court to see that the criminal

proceedings should not be encouraged, when it is found to be malafide or otherwise an abuse of process of the court.

14. 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.
15. Resultantly, the application succeeds. Rule is made absolute to aforesaid extend. **FIR being CR No.11196015220606 of 2022 registered with Navapura Police Station, Dist.: Vadodara,** and other consequential proceedings thereto against present applicants are hereby quashed and set aside.
16. The observations made hereinabove are prima-facie in nature and confined to the adjudication of the present application. The investigation agency as well as the trial Court shall not get influence by the said observation during the investigation as well as at the course of trial. Direct service permitted.

(ILESH J. VORA,J)

P.S. JOSHI/23/02