

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 20199 of 2022**

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JAYESHBHAI HASMUKHBHAI SHAH

Versus
STATE OF GUJARAT

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Appearance:

MS SEJAL K MANDAVIA(436) for the Applicant(s) No. 1,2

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

RULE SERVED for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 06/02/2024

ORAL ORDER

1. By invoking inherent powers of this Court, the applicants – original accused have preferred this application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the FIR being I-C.R.No.94 of 2019 registered with Ishanpur Police Station, Ahmedabad for the offence punishable under Sections 498(A), 323, 294(b), 506(2) and 114 of the Indian Penal Code read with Sections 3 and 7 of the Dowry Prohibition Act.

2. Brief facts leading to file present application are that the marriage of the private respondent Sraddhaben Shrenik Shah with Shrenik Jay Shah was solemnized on 28.01.2019 and after the marriage she went to her matrimonial at Vadodara. Due to matrimonial dispute, she has lodged an FIR against husband and his relatives, who are mother in law, father in law, sister in law and her husband. According to her case as disclosed in the FIR, she was subjected to mental and physical harassment at the instance of husband and his relative. That after 15 days of the marriage, and upon returning back from Andabar-Nicobar,

the dispute cropped up with the husband and in-laws. The serious allegation appears to be against the husband as he is not taking much interest in the private respondent as a result, she felt neglected. It is alleged that she was forced by the family members to undergo English speaking course so that she can get employment. It is in this matter, she could not undertake the English speaking course because she finds difficulty in speaking fluently. The another issue arose was that the in-laws forced her to bring Rs.10 lakhs as a dowry from her parental home. On the issue of dowry, she was mentally and physically tortured and on 23.05.2019, raising the issue of dowry, she was beaten up by the accused and driven out from the matrimonial home.

3. In the aforesaid circumstances, she lodged an FIR on 27.06.2019 against the applicants and others.

4. Pursuant to the registration of the FIR, the sister in law and her husband filed a quashing petition before this Court and after considering the allegations alleged against them, this Court does not find any material so as to attract ingredients of the offence cruelty and demand of dowry, as a result, the FIR qua sister in law and her husband has been quashed.

5. In so far as the applicants is concerned, they are mother in law and father in law against whom, the allegations of mental and physical torture having been alleged in the FIR.

6. This Court has heard learned counsel Ms.Sejal K. Mandavia for the applicants and Ms.C.M. Shah, learned APP for

the respondent – State. Despite the service of notice upon the private respondent, she has chosen not to appear before this Court.

7. Mr.Sejal Mandavia, learned counsel has submitted that the present FIR is nothing but a clear abuse of process of law as on reading of it, the offence of cruelty as defined is clearly not made out and allegations are false and frivolous and having been alleged with a view to harass the applicants.

8. Ms.Sejal Mandavia, learned counsel would further submit that after the marriage, the private respondent spent 15 to 20 days at the matrimonial home. The ground reality is that after the said demise of father of private respondent, she intends to settle her mother at the matrimonial home for which, nobody has objected and despite of the consent on the part of all family members, she raises the unnecessary issues which led her to leave the matrimonial house within a span of one month. She would further urge that the private respondent was not happy with the husband and from the day one of the marriage, she raises the issue with the husband for which the family members have nothing to do with the private dispute of the husband and wife.

9. In the aforesaid contentions, learned counsel would urge that the contents of the FIR in their entirety except as it is, then no offence is made out against the applicants and therefore, merely allegation by using word cruelty would not suffice to establish the prima facie case against the applicants. Thus, therefore, she urged that in absence of any specific allegation

regarding the act of cruelty and demand of dowry, prima facie on the basis of common and general allegations, no offence is made out and therefore, continuation of the proceedings without their being any material is nothing but an abuse of process of law and Court and this is a fit case to exercise inherent powers of this Court to quash the questioned FIR.

10. Ms.C.M. Shah, learned APP for the respondent – State has submitted that the disputed facts as canvassed by the applicants cannot be examined at this stage and thus, no case is made out to exercising inherent powers of this Court.

11. 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.”

12. 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.”.

13. 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.

14. Having regard to the facts and circumstances of present case, the issue falls for consideration is whether the case is made out for quashing the FIR by invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973.

15. On the facts on hand, it is not in dispute that the marriage of private respondent with Shrenik Shah was solemnized on 28.01.2019. After the marriage, the couple went Andabar-Nicobar for about ten days where the private respondent raised the matrimonial dispute and the same was continued till 23.05.2019. Thus, therefore, the wife was having a serious dispute with husband as he failed to discharge his matrimonial obligation towards her. It is in these background facts, this Court has considered the allegations made against the applicants who are mother in law and father in law and on perusal of the contents of the FIR, it appears that by making exaggerated version of petty domestic issue the applicants who are aged parents of the husband have been implicated without allegations of active involvement, except making general and

omnibus allegations. The theory projected in the FIR for demanding Rs.10 lakhs seems to be inherently improbable as at the one hand the wife alleges that the husband failed to fulfill his matrimonial obligation and on other hand, without any specific date and other relevant aspect to substantiate of dowry, she alleges that applicants harassed her.

16. For the aforesaid reasons, this Court is of the prima facie view that due to serious differences with the husband, the private respondent wife has lodged the FIR implicating the entire family members by alleging the general allegations of cruelty and demand of dowry. Thus, therefore, the allegations made against the applicants do not make out any offence and therefore, it would be an abuse of process of law to allow the prosecution to continue against the applicants herein on the basis of vague and general complaint.

17. Resultantly, the application succeeds. The FIR being I-C.R.No.94 of 2019 registered with Ishanpur Police Station, Ahmedabad and other consequential proceedings thereto are quashed and set aside. Rule is made absolute accordingly.

18. The view expressed hereinabove are tentative in nature and confined to the adjudication to the present application. The Trial Court shall not get influence by the said observations during the course of trial.

(ILESH J. VORA,J)

Rakesh