

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 21472 of 2022**

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JUMMIBANU MAMMAL KHAN & ORS.JUMMIBANU MAMMAL KHAN
Versus
STATE OF GUJARATSTATE OF GUJARAT & ANR.
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Appearance:

MR JIGAR G GADHAVI(5613) for the Applicant(s) No. 1,2,3,4,5
NOTICE SERVED for the Respondent(s) No. 2
MS CM SHAH APPfor the Respondent(s) No. 1
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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 16/02/2024

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.11191018220909 of 2022 registered with Gomtipur Police Station, Ahmedabad**, for the offences 498A, 323, 294(b), 114 of Indian Penal Code and under Sections 3 and 7 of the Dowry Prohibition Act.

2. The applicants are father-in-law, brother-in-law and his wife and distant relatives of the second respondent. Admittedly, the marriage of the second respondent with accused no. 1 Gulam Ali Khan was

solemnized on 25.04.2010 at Alvar, Rajasthan and thereafter, she came to Ahmedabad at her matrimonial home to fulfill the marital obligations. The questioned FIR is being lodged on 11.09.2022, inter-alia alleging by the second respondent that, her husband is not doing any livelihood work and therefore the dispute on this count arose between the parties. It is further alleged that, after two months of the marriage, said dispute was arise and she was mentally and physically harassed by the husband. It is in this background facts, she has further alleged in the FIR that, the applicants being in-laws, harassed her on the household work and abated and aided her husband in committing the offence of cruelty. She was twice came at her parental home and due to intervention of elderly persons of the society, she again came back at her matrimonial home and despite the assurance given by her husband, she was again mentally and physically harassed by the husband and in-laws and husband miserably failed in paying the amount of maintenance. The another allegation made against the in-laws are that, after delivery of two baby girls, they insisted to deliver a baby boy and on that count, she was harassed. In the FIR, it is alleged that, since last three years, she is living at her parental home and the in-laws and husband did not have cared for

her maintenance and neglected her.

3. This Court has heard learned counsel Mr Jigar Gadhvi and Ms. C.M. Shahm, learned Additional Public Prosecutor for the respondent State. The second respondent, though served, has chosen to remain absent from the proceedings.
4. Mr. Gadhvi, learned counsel has submitted that, this is a case of false application and in absence of specific allegations against the any one of the applicants, except common and general allegations, no offence under Section 498A is made out. He would further urge that, after 10 years of the marriage, the questioned FIR is filed and since last three years she is residing at her parental home and thus, therefore, there is inordinate delay in lodging the FIR as no any satisfactory explanation given for lodging the FIR after long delay of 10 years and on that count, the proceedings required to be quashed and set aside. That, the brother-in-law, Nazafali with whom the sister of the second respondent got marry, has nothing to do with day to day life of the husband and wife, as due to his service with Navy Merchant, since long, he had left the house. Even after the second marriage with accused Vashima Banu, he has not lived with the second respondent. Thus, therefore,

the implication of the applicants being made in a casual manner with oblique motive and same deserves to be quashed and set aside.

5. Mr. Jigar Gadhvi has submitted that, since from the date of marriage, the husband Gulam Ali Khan, being a non-earning person, the dispute was arose and he is the person with whom the second respondent was not comfortable during the entire marriage life.
6. In the aforesaid contentions, the learned counsel Mr. Gadhvi 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. Ms. Chetna Shah, learned State Counsel 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. 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. 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.
13. Having regard to the facts and circumstances to the present case and on perusal of the allegations made in

the FIR, this Court is of the considered view that, from the inception of the marriage, the second respondent was knowing that her husband - accused no. 1 was not doing any work for livelihood of the family and despite of this, she lived for almost 7 to 8 years with the husband and other family members. She attempted to get a maintenance from the husband and despite the order passed by the Court to pay the maintenance, she could not get the full amount of the maintenance. Since last 3 years, she is living at her parental home and according to her statement, neither the husband nor the applicants tried to bring back her at the matrimonial home. In such circumstances, the implication of the applicants in the alleged act of cruelty and demand of dowry having been made so as to pressurize the applicants to come to a either compromise or for permanent resolution of the matrimonial dispute. The brother-in-law Nazafali, was throughout lived separately at his respective place of service and when he got remarried, the second respondent has already left the matrimonial home. Thus, therefore, the allegations of cruelty made against the applicants seems to be general in nature and under the frustration, the second respondent lodged an FIR against the entire family. Thus, therefore, the allegations made against the applicants accepted in its entirety as it is, no offence is made out.

14. 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.
15. 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.
16. Resultantly, the application succeeds. **FIR being CR No.11191018220909 of 2022 registered with Gomtipur Police Station, Ahmedabad,** and other consequential proceedings thereto against present applicants are hereby quashed and set aside.
17. 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