

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 20979 of 2022**

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SURESHBHAI KESHABHAI KUA (CHAUDHARY)(Disposed of as per
HOn'ble court order dt.16/11/22) & ORS.SURESHBHAI KESHABHAI KUA
(CHAUDHARY)(Disposed of as per HOn'ble court order dt.16/11/22)

Versus

STATE OF GUJARAT STATE OF GUJARAT & ANR.

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Appearance:

DELETED for the Applicant(s) No. 1
MS. PAYAL M TUVAR(7055) for the Applicant(s) No. 2,3,4,5
PUBLIC PROSECUTOR 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 : 19/02/2024

ORAL ORDER

1. By invoking inherent powers of this Court, the applicant - 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. 11195006220021 of 2022 registered with Mahila Police Station, Banaskantha**, for the offences under Sections 498A, 323, 294(b), 506(2), 376(2)(j)(n) and 114 of IPC, under Sections 3 and 7 of the Dowry Prohibition Act and and under Sections 4 and 8 of the POCSO Act.

2. The applicants are father-in-law, mother-in-law, uncle-in-law and cousin brother-in-law of the second respondent. Admittedly, the accused Suresh Chaudhary and second respondent were lived in relationship and stayed together for a long and entered into physical relationship. As a result, she got pregnant. Despite the facts of pregnancy, the marriage of the accused no. 1 and second respondent was solemnized on 23.05.2022. After their marriage, the second respondent came at the house of accused no. 1 for fulfilling the marital obligation. She gave a birth of baby boy on 18.06.2022. The questioned FIR is being filed on 13.07.2022 i.e. after one month of the birth of the baby boy. In the alleged FIR, she alleged against the applicant that she did not allow to visit the market as well as her parental home and considering her different caste, she was mentally and physically harassed by the applicants. The another allegation made in the FIR against the applicants is that, the sufficient dowry by her father was not given at the time of marriage and if she will go to her parental home, they being killed her family members and the third allegation alleged is that, the applicants want baby girl and they were not happy with the baby boy. After registration of the FIR, the further statement of the second respondent was recorded by the policy. In

her statement, she alleges that, before her marriage, she was raped by the accused husband and at relevant time, she was minor and her date of birth was forged by her husband. In view of said allegation, the investigating agency has reported the court concerned for addition of Section 376 and provision of the POCSO Act.

3. This Court has heard learned counsel Ms. P.M. Tuver. The second respondent, though served, has chosen to remain absent from the proceedings.
4. Ms. Tuver, 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. She would further urge that, the implication of the applicants in the alleged FIR being made with ulterior and /or oblique motive and the allegations seems to be absurd and improbable. On factual aspect, she drew the attention of this Court that, the marriage according to statement of the wife was solemnized on 22.09.2022 and due her pregnancy before the marriage, she delivered the baby boy on 18.06.2022 and in that view of the matter, no question of allowing her to go outside the house, as she herself

was not in a position to go outside because of her postpartum period.

5. In view of the aforesaid contentions, she urged that, the present FIR is nothing but a sheer misuse of process of law and court as by alleging false allegations, the wife has misused the criminal machinery to pressurize the applicants herein and this is the fit case to protect the innocent applicants.
6. Ms. Chetna Shah, learned State Counsel has submitted that, the High Court at this stage, would not ordinarily enter 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.
7. 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.

8. 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 uncontested 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."

9. 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.”.

10. 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.
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. 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, the second respondent has lodged an FIR against the applicants with ulterior motive and to harass them. The reason behind lodging the FIR against the applicants is that, the second respondent after living with Sureshbhai in live-in-relationship and on solemnization of the marriage within span of 22 days

after the delivery of baby boy, the serious differences of matrimonial dispute arose with her husband. In such circumstances, the allegation of demand of dowry and restraining her to visit openly in the market seems to be inherent and improbable. Subsequent to the FIR, the invocation of the rape charges against the husband, would suffice to prima-facie infer that the second respondent was having a serious dispute with accused no.1.

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. **FIR being CR No. 11195006220021 of 2022 registered with Mahila Police Station, Banaskantha** and other consequential proceedings thereto against present applicants are hereby quashed and set aside. Rule is made absolute to aforesaid extent.
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