

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 6073 of 2022**

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SHOBHABEN D/O ARJANBHAI SANKHATSHOBHABEN D/O ARJANBHAI
SANKHAT & ORS.

Versus

STATE OF GUJARAT & ANR.STATE OF GUJARAT

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Appearance:

MR NIMESH M PATEL(6780) for the Applicant(s) No. 1,2,3
DS AFF.NOT FILED (R) 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 : 20/02/2024

ORAL ORDER

1. By invoking inherent powers of this Court, the applicants - original accused, who are facing the charges for the offences of cruelty have preferred this application for quashing of the **FIR being CR No.11198035211243 of 2021 registered with Mahuva Police Station, Bhavnagar,** for the offences 498A, 323, 504 and 114 of Indian Penal Code.

2. Brief facts revels from the record are that the applicants are sister-in-law, mother-in-law and father-in-law of the second respondent. Admittedly, the marriage of the second respondent with accused no.1 Kishor Arjanbhai was solemnized on 21.02.2018 at

Village: Fachariya, Jafrabad, Dist: Amreli. After, marriage she stayed for about 15 days at Village: Fachariya and thereafter, the husband and wife along with sister-in-law came at Ahmedabad where the husband was doing accountancy work. Initial period of five months at Ahmedabad was peaceful and thereafter, due to matrimonial dispute, the second respondent was subjected to mental and physical harassment by the husband as well as sister-in-law. She filed a maintenance proceeding. The compromise in the proceeding was arrived at and she again came at matrimonial home at Ahmedabad, however, the compromise did not work peacefully and again, she has alleged that, the husband is beating her and in that act, the sister-in-law has abetted to the husband. It is alleged that whenever, father-in-law and mother-in-law came from village at Ahmedabad, they always supported the illegal act of their son, whereby, they are also liable for the act of cruelty and demand of dowry.

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. N.M. Patel and Ms. C.M. Shah, learned Additional Public Prosecutor for the respondent State. The second respondent, though served, has chosen to remain absent from the proceedings.
5. Mr. N.M. Patel, 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. Patel 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 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 allow 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. Having considered the contentions advanced by learned counsel for the respective parties and on perusal of the allegations made in the FIR, this Court is of the considered view that the implication of the

applicants in the offence of cruelty having been made due to matrimonial discord of the husband and wife. The mother-in-law and father-in-law have never shared the house at Ahmedabad with second respondent wife, as they are permanent resident of village Fachariya. The private respondent stayed at village: Fachariya hardly for 15 days and during stay at Fachariya, the marriage life went smooth without any issue. The issue arose between the parties when they came at Ahmedabad, where she lived with her hardly for about 2 months. The record shows that with the intervention of the elderly people of the community the settlement arrived between the parties and same has been reduced into writing. In view of the settlement, she again came to reside with her husband at Ahmedabad and thereafter also, she was not comfortable with the husband. In such circumstances, the majority of the allegations of physical and mental torture having been alleged against the husband and so far as applicants are concerned, the general allegations having been alleged. Thus, therefore, prima-facie, this Court is of the view that, due to matrimonial discord with the husband and despite the compromise, the marital life got disturbed, as a result, the questioned FIR implicating the two old aged person, who are residing at village: Fachariya and sister-in-law, who had lived

with the private respondent hardly for about one and half month, has been filed and upon reading the contents of the FIR, the ingredients of the offence of cruelty are not made out.

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 (*supra*) 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. **FIR being CR No.11198035211243 of**

2021 registered with Mahuva Police Station, Bhavnagar, 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