

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 20645 of 2022**

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BALVANTBHAI SHANABHAI VANKAR

Versus

STATE OF GUJARAT

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Appearance:

ANAND R PATEL(7352) for the Applicant(s) No. 1,2,3

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

SERVED BY RPAD (N) 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 petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the FIR being C.R.No.11197035220674 of 2022 registered with Desar Police Station, Vadodara Rural for the offence punishable under Sections 498(A), 294(b), 506(2) and 114 of the Indian Penal Code.

2. Brief facts leading to file present application are that the private respondent Hamlataben Vankar lodged an FIR against her husband and relatives of the husband *inter alia* alleging that she was subjected to mental and physical harassment at the instance of applicants. Admittedly, the marriage span is 18 years. The husband is serving in Army. The applicants are brother in law, sister in law and mother in law. The applicants are living separately at the address mentioned in the cause title of this application. The private

respondent along with her two sons living separately at Vadodara and since 2016, they have settled there and living independently. The dispute cropped up with the husband because he maintained extramarital affairs with the woman named in the FIR. So far as applicants are concerned, it is alleged that they have aided and abated the husband for the commission of the alleged cruelty.

3. Pursuant to the aforesaid FIR, the applicants being in-laws have preferred this application on the premise that since long, they are living separately and never shared the house with the private respondent and therefore, to pressurize the in-laws for amicable settlement with the husband, by making general allegations, the impugned FIR is being filed with a view to harass the applicants.

4. This Court has heard learned counsel Mr.A.R.Patel for the applicants. The private respondent, though served, has chosen not to appear before this Court nor she has filed any affidavit.

5. Mr.Patel, 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.

6. In view of the aforesaid contentions, learned counsel has submitted that to prevent the misuse the process of the law and Court, this is a fit case to exercise the inherent

powers.

7. 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.”

8. 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.”.

9. 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.

10. In the case of Geeta Mehrotra and Anr. v. State of

Uttar Pradesh and Anr reported in (2012) 10 SCC 741, it is observed that, family members of the husband are being implicated without allegations of active involvement and they are being implicated casually.

11. Having heard learned counsels for the respective parties, the issue falls for consideration is whether the case is made out for quashing the criminal proceedings by invoking the extraordinary jurisdiction of this Court.

12. 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.

13. 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.

14. On the facts on hand, the husband is serving with Army and marriage span is of 18 years and more. Since 2016, the private respondent along with her husband living separately at Vadodara whereas the applicants are living at Village Dhantej. On perusal of the contents of the FIR, it emerges that the serious allegations of maintaining the

extramarital affairs being made against the husband and she has also alleged that her husband use to beat her on petty issue. In such circumstances, it *prima facie* appears that the applicants have been falsely implicated without their being any specific allegations of harassment and thus, the offence of cruelty so far as applicants are concerned, are not made out. The Apex Court in its various judgments time and again has observed that the authority of the High Court exists for advancement of justice and if any attempt is made to abuse that authority so as to promote injustice, the Court has power to prevent such abuse.

15. Resultently, the application succeeds. The FIR being C.R.No.11197035220674 of 2022 registered with Desar Police Station, Vadodara Rural and other consequential proceedings thereto are quashed and set aside.

Direct Service is permitted.

(ILESH J. VORA,J)

Rakesh