

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 6516 of 2022**

YOGESHBHAI DEVANDRBHAI POLRA (SONI)

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI(1077) for the Applicant(s) No. 1,2,3,4

MR. HJ KARATHIYA(7012) for the Respondent(s) No. 2

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

CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 11/01/2024

ORAL ORDER

1. This Court has heard learned counsels Mr.S.A. Qureshi, Mr.Hardik Karathia and Ms.Maithili Mehta, learned APP for the respective parties.
2. The affidavit in reply tendered by learned counsel Mr.Karthia is ordered to be placed on record.
3. The applicants are husband, father-in-law, mother-in-law and brother-in-law of the respondent – wife. The marriage of the respondent and applicant -Yogeshbhai was solemnized in the year 2003. The applicants are permanent resident of City Jamkhambhalia and doing jewellary business. Initially, for a period of six months, the marriage life went smoothly. Out of the said wedlock, two children were born i.e. daughter aged about 14 years old and son aged about 4 years. On 19.01.2020, respondent – wife lodged an FIR with Kesod Police Station against the applicants for the offences punishable under Sections 498(A), 323, 294(B) and 114 of the Indian Penal Code.
4. The respondent-wife, in her FIR, made allegations against

the applicants that she was subjected to cruelty and harassment by the husband and other family members. In the FIR, it is alleged that the mother-in-law harassed her as she did not like her cooking. The second allegation made in the FIR is that brother-in-law, at the instance of husband and others, used to beat her on the petty issue. It is further alleged that due to the marital discord, she was compelled to live separately, accordingly, with the help of her parents, she bought a residential house and started living separately with the husband from the other family members. It is alleged that after separation, the harassment was continued and pressurized her to transfer the house in their name. In the year 2016, the husband left the house and missing complaint came to be filed.

5. Pursuant to the FIR, the investigating agency filed a chargesheet against the applicants for the aforesaid offences.
6. By way of this application, the applicants have invoked inherent powers of this Court for quashing of the criminal proceedings.
7. Mr.S.A. Qureshi, learned advocate appearing for and on behalf of the applicants, has submitted that since 2004, wife and husband lived separately. That the allegations made against the applicants are inherently improbable, false and concocted and having been alleged with a view to harass the applicants to defame in the society. That no specific date and time being mentioned in the FIR, with regard to allegations of harassment and therefore, by making general and omnibus allegation, the applicants are

- being implicated casually.
8. In view of the aforesaid contentions and relying on the judgment of State of Haryana Vs. Bhajanlal (1992 Suppl. 335), learned counsel has submitted that the allegations made in the FIR if accepted as it is, do not constitute any offence or make out a case and therefore, he prays that when the criminal proceedings is manifestly attended with malafide and with an ulterior motive for wreaking vengeance on the accused, the Court should have exercised inherent powers to prevent the misuse of process of law and Court.
 9. On the other hand, learned counsel Mr.Hardik Karathia, appearing for the respondent – wife, has submitted that the investigating agency found sufficient materials for the alleged offence and therefore, once the chargesheet is filed after considering the material on record, the High Court may not exercise its inherent jurisdiction as alternative remedy to file discharge application is available. That there is a specific allegation of physical torture as well as mental harassment mentioned in the FIR and in that view of the matter, when the disputed questions of fact are involved, the Court may not examine the reliability of genuineness of otherwise of the allegations made in the FIR.
 10. In view of the aforesaid contentions, Mr.Karathia submitted that no extraordinary circumstances exists to exercise inherent powers and therefore, he prays that the application may not be entertained.
 11. Having regard to the facts and circumstances of the case, the issue falls for my consideration is whether the case is

- made out to exercise jurisdiction under Section 482 of the Cr.P.C. for quashing of the criminal proceedings.
12. Before adverting the contention raised by the respective parties, it is necessary to refer to and rely upon the case of *Kahkashan Causer @ Sonam Vs. State of Bihar* (2022) Live Law (SC) 141. The Apex Court while dealing with the case instituted under Section 498(A) of the Indian Penal Code, after referring its earlier decision in the case of *Rajesh Bajaj Vs. State of NCT of Delhi*, 1999 3 SCC 259, *Arnesh Kumar Vs. State of Bihar*, 2014 8 SCC 273, *Preeti Gupta and anr. Vs. State of Jharkhand and anr.*, 2010 7 SCC 667, etc., observed that the tendency of implicating husband and all his immediate relations is also not uncommon. The Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of complaint are required to be scrutinized with great care and circumspection. The Court should be careful in proceeding against distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.
13. In light of the settled principles of law propounded in the aforesaid cases, and considering the peculiar facts of the

present case, this Court is of the view that there is inordinate delay of 17 years in lodging the FIR for which no satisfactory explanation forthcoming and the allegations qua mother in law and brother in law in relation to the mental and physical harassment prima facie seems to be inherently improbable and having been alleged with maladife and ulterior motive to harass them. So far as father in law and husband are concerned, no any specific allegation being alleged against them.

14. On perusal of the chargesheet case papers, the facts emerge that the marriage of the respondent no.2 with applicant no.1 Yogeshbhai was solemnized in the year 2003. After six months, the domestic dispute cropped up between the parties. In the FIR, it is stated that due to the said dispute, she along with her husband bought the house in Khambhalia and lived independently from the other family members. Considering the age of the daughter, the wife and the husband lived together for about 16 years as the alleged FIR came to be filed on 19.01.2020. Thus, it emerges from the case papers that wife had lived in a joint family for about one year and since then, she had lived living separately with her husband. In such circumstances, the allegations of physical and mental harassment having being alleged after 16 to 17 years of the marriage span and that too without any specific date and time. Thus, on careful examination of the case papers, it appears that the facts of the harassment are seems to be inherently improbable and some sort of exaggerated version of the allegation incident can be seen. It needs to

be noted that in the year 2016, the husband had left the house without informing the wife. The missing complaint was lodged by the wife. The wife respondent sat silent for about 16 to 17 years and did not exhaust the remedy and after inordinate delay of 17 years, that too without any satisfactory explanation, the criminal prosecution has been instituted. On perusal of the contents of the FIR in chargesheet case papers, the delay of 17 years in lodging the prosecution has been established. In cases where there is a delay in lodging the FIR, the Court has to look for a plausible explanation for such delay and in absence of such explanation, the delay may be fatal. Thus, *prima facie* it appears that on account of marital discord with the husband, the respondent wife has initiated the criminal proceedings to pressurize the applicants and to harass them.

15. The contention is raised that after chargesheet, the remedy to file discharge application is available and thus, this Court may not exercise discretion. In support of this contention, the case of Sunitakumari (2023 (0) AIJEL -SC 71232) has been relied to contend that once the chargesheet is filed, after the investigation, the Court may not exercise its inherent powers. This Court does not find any merit in the contentions advanced by learned counsel Mr.Karathia. In the cited case, wife was suffering from disease AIDS and divorce petition was also pending between the parties and High Court found the allegation of dowry improbable. In the factual aspect, the Apex Court held that merely because the wife was suffering from

disease AIDS and divorce petition was pending and it cannot be said that the allegations of demand and dowry are improbable. In the facts of the present case, after 17 years, the allegation of harassment which was taken way back in the year 2004, came to be disclosed in the FIR. Thus, therefore, cited case would not rescue to the respondent wife. It needs to be noted that merely because chargesheet is filed, alternative remedy to discharge application is available, the same by itself would not constitute a bar for entertaining an application under Section 482 of the Cr.P.C. as there is no total bar on the exercise of inherent powers where the abuse of process of the Court or other extraordinary situation excites the Court's jurisdiction (Raghu Chawla Vs. State of Rajasthan, 2016 (16) SCC 30).

16. The second contention is that when disputed questions of facts are involved, the Court may not examine the said facts as it is a function of the Trial Court to examine it. In support of these contentions, the judgment of the Apex Court in the case of Koppisetti Subbharao @ Subramaniam Vs. State of Andhra Pradesh (AIR 2009 SC 2684) has been relied to contend that the Court may not enter into the disputed question of facts. In the cited case, the issue of valid legal marriage was involved and therefore, the Supreme Court considering the this question of facts held that when the disputed questions of facts are involved, the application under Section 482 of the Cr.P.C. may not be entertained. In the facts of present case, the marriage is not in dispute, the marriage span of 17 years is also

undisputed, since 2004, wife and husband had stayed independently, admittedly, there is an inordinate delay in lodging the FIR, the husband left the house in 2016, no specific date and time for the alleged physical and mental harassment at the hands of mother in law and brother in law being disclosed in the FIR. Thus, considering these admitted facts, the contention that the disputed facts are involved, cannot be accepted.

17. For the reasons recorded hereinabove, this Court is convinced that the criminal proceedings initiated by the respondent wife with malafide and ulterior motive to harass the applicants and the allegations of mental and physical harassment alleged to have been taken place in the year 2004, which found to be inherently improbable and false.
18. Resultantly, the case is made out to exercise inherent powers to prevent abuse of process of the law and Court and accordingly, the application is **allowed**. The proceedings of Criminal Case No.441 of 2020 pending before the Additional Chief Judicial Magistrate Court, Junagadh at Kesod and consequently proceedings thereof, are quashed. Rule is made absolute accordingly.

Direct Service is permitted.

(ILESH J. VORA,J)

Rakesh