

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 7737 of 2022****With****R/CRIMINAL MISC.APPLICATION NO. 9933 of 2022**

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NIHARIKABEN DILIPBHAI TRIVEDI

Versus

STATE OF GUJARAT

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Appearance:

KAMAL J UPADHYAYA(7469) for the Applicant(s) No. 1

MR.ADITYA J PANDYA(6991) for the Applicant(s) No. 1

MR DILIP P JOSHI(1819) 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 : 19/01/2024****COMMON ORAL ORDER**

1. Since the issue involved in both the applications are identical and arise from the same FIR, they have been heard together and disposed of by this common order.
2. The applicant Niharika Dilipbhai Trivedi (Cr.M.A. 7737 of 2022) is the distant relative of the private respondent, whereas, the applicants – Krutiben, Krupali and Darshan Bhavsar (Cr.M.a. No. 9933 of 2022) are sister-in-laws and family member of respondent no. 2. The marriage of the respondent no. 2 with one Rohan Bhatti, was solemnized in the year 2017 and after the marriage, the respondent wife went to matrimonial home at Kutch-Gandhidham. Due to matrimonial dispute, she lodged an FIR against the

applicants and other family members of the husband, inter-alia, alleging that, she has been subjected to mental and physical harassment at the instance of husband and his relatives.

3. In the aforesaid background facts, the applicants, who are relatives of the husband have preferred the aforesaid applications by invoking inherent powers of Section 482 of the Cr.P.C., for quashing of the criminal proceedings initiated by the respondent wife.
4. Brief facts giving rise to file present applications are that, the marriage was solemnized on 11.12.2017. The respondent wife after the marriage went to her matrimonial home and it was a joint family and family consisting of mother-in-law, father-in-law. The sister-in-laws namely Krutiben and Krupali are living separately at their respective matrimonial home. In the month January, 2021, the respondent no. 2 wife due her pregnancy went to her parental home for delivery. It is alleged that, when she came to parental home for delivery, she used to talk on mobile with the in-laws and due to some differences, she was harassed by in-laws on trivial issues and after the birth of daughter, the husband and in-laws show disinterest in taking her back to matrimonial home and when she raised the issue with the in-laws, she was scolded by them and asked that her behavior needed improvement. It is further alleged that, on 23.01.2022, she came back at her matrimonial home, where, the in-laws and husband misbehaved with her and was not properly welcomed. It is further alleged by the respondent wife

that, she was called at the house of uncle-in-law, where the applicants and other members assembled for social purpose. In the said gathering the objections were raised by the in-laws about the coming return back by her at the matrimonial home. During the said ruckus, it is alleged that the mother-in-law, father-in-law and the applicant Darshan have beaten and eaten up her and at that time, the applicant Niharika Trivedi who being a distant relative of the husband, threatened her that she will beat her and in that process, the sister-in-laws have instigated the husband and others.

5. In the aforesaid facts, the respondent wife in her FIR alleges that, she was mentally and physically harassed by the in-laws and husband, whereby, they have committed the offence of cruelty and causing voluntary hurt punishable under the provision of the Indian Penal Code.
6. Mr. A.J. Pandya, learned advocate and Mr. A.L. Pandav, learned counsel for the applicants have submitted that, the impugned FIR is vindictive in nature and is clearly an abuse of process of law and same is absolutely false and frivolous and on reading of it, the offence of cruelty is clearly not made out. The allegations are totally vague and highly improbable and it is a case of over implication and proceedings is manifestly attended with malafide and is maliciously instituted with a ulterior motive.
7. Mr. A.J. Pandya with Mr. K.J. Upadhyay, learned advocates appearing for the applicant – Niharika Trivedi, has submitted that,

on bare perusal of the FIR, nothing being alleged against her so far, act of cruelty is concerned. The applicant being an elderly member of the family, tried to mediate the dispute between husband and wife and she has nothing to do with the marital discord of the husband and wife. The applicant is living separately and never shared the house with the respondent wife. The only allegations qua the applicant is that, she had administered the threat to the respondent wife, when she intervene in the dispute. In such circumstances, Mr. Pandya has submitted that, by making exaggerated version of the incident, the applicant, has been falsely implicated without allegation of her active involvement and thus, the casual implication in the criminal proceedings of her, would tarnish her image in the society and the allegations so far applicant is concerned, would not fall under the definition of 'cruelty' and therefore, the criminal proceedings qua her is amount to gross misuse of process of law and court and same deserves to be quashed and set aside.

8. Mr. Pandav, learned counsel appearing for two sister-in-law and one distant relative has submitted that both the sisters are living separately at her matrimonial home and the allegations for the abetment having been made without their being any specific instances of harassment on their part and by making general and omnibus allegations, they have been falsely implicated. So far as, Darshan Bhavsar is concerned, on 23.01.2022, when dispute arose, he along with mother-in-law and father-in-law have beaten up the respondent wife. It is in this context, it is submitted that, this

statement is casual in nature and highly improbable and no prudent man would believe it that the distant relatives without any justification, caused the injuries. The respondent wife failed to place on record the supporting evidence in relation the injuries sustained by her. Thus, therefore, it is submitted that, so far applicants are concerned, the allegations do not constitute an offence of cruelty and therefore, the continuation of the proceedings, qua the applicants would nothing but an unnecessary harassment and same may be quashed and set aside by invoking inherent powers of this court.

9. On earlier occasion i.e. on 14.12.2023, the counsel appearing for the respondent wife sought adjournment and matter was fixed for final hearing on 21.12.2023 and on that day, the counsel Mr. Dilip Joshi did not remain present and as a last opportunity, the matter was again posted on 19.01.2024. When the matter was called out in the first as well as second half, the learned counsel Mr. Joshi did not remain present to assist the Court and in that circumstances, the court has no option but to hear the matter on merits.
10. Mr. Chetna Shah, learned Additional Public Prosecutor for the respondent State has submitted that, the factual aspects as canvassed cannot be examined at this stage and the genuineness or otherwise of the allegations made in the FIR, would be the subject matter of trial and therefore, she prays that, this is not a fit case to exercise the powers to quash the criminal proceedings.

11. Having heard the learned counsel for the respective parties and on perusal of the allegations leveled in the FIR, the issue falls for my consideration is, whether case is made out to quash the questioned FIR by invoking inherent powers under Section 482 of the Code?
12. Before advertng to the submissions made hereinabove, it is necessary to refer the settled law on the aspect of quashing the criminal proceedings, more particularly when the allegations pertaining to matrimonial dispute.
13. 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.
14. 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 channelized 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.”

15. 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.”

16. 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.

17. 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.
18. In light of the aforesaid settled principles of law and considering the role attributable to present applicants herein in the alleged offence of cruelty and allegations leveled in the FIR, this Court is of the considered view that, by alleging exaggerated version of the trivial domestic issues, the applicant Niharika Trivedi, two sister-in-laws and one Mr. Darshan Bhavsar, the distant relative have been implicated in the very casual manner without their being any specific allegation of cruelty. The allegation of giving threat by applicant - Niharika Trivedi, who is distant relative of the husband, without disclosing the specific background, the said allegation made against her seems to be false and frivolous and inherently improbable. So far as two sister-in-law are concerned, it is admitted facts that they are living separately since long at their matrimonial home and there is no specific allegation on which date and on what ground, they instigated the in-laws for commission of the offence of cruelty and thus, the allegations made against them are in nature of

general, omnibus allegations and having been alleged to mount the pressure on the husband and others with oblique purpose. The applicant Darshan Bhavsar, was there in the dispute, as discussed above, but how he physically assaulted to the respondent wife, that has not been disclosed and merely a simply allegation that, he has beaten up the respondent wife, cannot be accepted.

19. In the aforesaid circumstances, the allegations of cruelty and physical violation, so far applicant is concerned, 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 them and therefore, when there is false implication, it is the duty of the court to see that the criminal proceedings should not be encouraged and the person who is absolutely innocent is not subjected to prosecution and humiliation on the basis of false allegations.
20. 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.
21. Resultantly, the application succeeds. Rule made absolute to aforesaid extent. The FIR being I-C.R.No.11993012220025 of 2022, registered with Mahila Police Station, Kutch East (Gandhidham), and other consequential proceedings thereto qua present applicants are quashed and set aside.

22. The views expressed hereinabove are confined to the case of present applicants herein. The trial Court shall decide the case of the husband in accordance with law without being influenced by the observations made hereinabove.

P.S. JOSHI/22/01

(ILESH J. VORA,J)