

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 23579 of 2022**

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REKHABEN RAJNIKANT DEVANI

Versus

STATE OF GUJARAT

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Appearance:

MR.NANDISH H THACKAR(7008) for the Applicant(s) No. 1,2

MR VICKY B MEHTA(5422) 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 : 30/01/2024****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 criminal proceedings being Criminal Misc. Application No.6067 of 2022 filed by the private respondent under Section 12 of the Domestic Violence Act, 2005, seeking various reliefs in respect of issuance of protection order, residence order and monetary relief in terms of monthly maintenance, etc.
2. Brief facts giving rise to file present application are that the marriage of the private respondent with Ankit Rajnikant Devani was solemnized on 10.12.2018 and thereafter, the private respondent went to her matrimonial home at Gandhinagar as her husband being a chartered accountant doing his profession in a partnership firm. The

matrimonial dispute arose after four to five months of the marriage period. It is alleged by the respondent wife that on petty issue, the husband, mother in law and brother in law hurled abuses and was physically and mentally tortured by the husband at the instance of family members. It is further alleged that she asked to bring Rs.10 lakhs as a dowry from her parental home and after birth of the male child, she was subjected to harassment by the in-laws and lastly, in the month of January-2022, she was driven out from the matrimonial home. In these circumstances, the private respondent by invoking the provisions of the Domestic Violence Act, 2005 filed a complaint which has been culminated into Criminal Misc. Application No.6067 of 2022 which is pending for its adjudication before the Metropolitan Magistrate Court at Ahmedabad.

3. Pursuant to the said proceedings, the mother in law and brother in law have preferred present application *inter alia* alleging that the criminal proceedings is being initiated with *malafide* intention and to defame them in the society and thus, the same is nothing but an abuse of process of the law and Court.
4. This Court has heard learned counsel Mr.Nandish Thackar and Ms.Asmita Patel, learned APP for the respondent – State. The private respondent who has filed the complaint, though served, has not filed his appearance nor filed any affidavit to oppose the petition.
5. Mr.Nandish Thackar, learned counsel has submitted that the impugned proceedings has been initiated with *malafide*

intention, without their being any specific instances of the domestic violence. The applicants never lived together at Gandhinagar as they are permanent resident of village Talala, Junagadh and therefore, the allegations of physical abuse having been alleged with a view to harass the applicants and pressurize them for settlement. That after three years of the marriage, without any justification, the allegations of dowry being alleged against the applicants and therefore, where the judicial process is being used as an instrument to harass the applicants, the continuation of the same would amount to misuse of the process of the law and the Court and thus, this is a fit case to exercise the inherent powers under Section 482 of the Code of Criminal Procedure, 1973.

6. Though served, the private respondent has chosen not to appear before this Court.
7. Having regard to the facts and circumstance of present case and contentions raised by the applicants herein, this Court is of the considered view that after the marriage, she never lived at village Talala, Junagadh with the applicants as the husband being a Chartered Accountant is running his partnership firm in Gandhinagar and considering this aspect, the husband and wife jointly have purchased the flat at Gandhinagar. The private respondent has admitted the said facts in the complaint. In such circumstances, the allegations made against the applicants in relation to the domestic violence seems to be false, frivolous and having been alleged with ulterior motive. It *prima facie* appears that due to marital discord with the husband, the

applicants have been roped in by making sweeping and general allegations without their being any specific instances of harassment. The Apex Court in its various judgments time and again observed that the Court must ensure that the criminal proceedings is not used as an instrument or for seeking private vendetta or with ulterior motive to pressurize the opposite party and it is the paramount duty of the superior Court is to see that the person who is absolutely innocent is not subjected to prosecution and humiliation on the basis of false and wholly untenable complaint.

8. For the reasons aforesaid mentioned, the case is made out to exercise inherent powers of this Court as so far applicants are concerned, the allegations made in the complaint do not *prima facie* constitute any act of domestic violence or no case is made out to hold liable for the various reliefs prayed by the private respondent under the provisions of the Domestic Violence Act.
9. 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.
10. Resultantly, the application succeeds. The complaint being criminal proceedings being Criminal Misc. Application No.6067 of 2022 filed by the private respondent under Section 12 of the Domestic Violence Act, 2005 and other consequential proceedings thereto are quashed and set

aside, qua the applicants.

11. 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.

Rakesh

(ILESH J. VORA,J)