

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 23358 of 2022**

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KISHORBHAI DHANSUKHBHAI PAREKH & ANR.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

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

MR. SURAJ A SHUKLA(7185) 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 : 29/02/2024

ORAL ORDER

1. By invoking inherent powers of this Court, the applicants-original accused, who are facing the charges for the offences of cruelty and demand of dowry have preferred this application for quashing of the chargesheet filed in connection with the **FIR being CR No. 111210031220274 of 2022 registered with Mahila Police Station, Dist.: Surat City**, for the offences 498A, 323, 504 and 114 of Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act, 1961.

2. This Court has heard learned counsel Mr. Nandish Thackar, Mr. Girish Parmar for Mr. Suraj Shukla, and Ms. C.M. Shah, learned Additional Public Prosecutor

for the respective parties.

3. Brief facts emerges from the record are that the marriage of the second respondent Khushbu Udhnawala was solemnized on 19.07.2022 at Australia. Admittedly, the applicants being mother-in-law and father-in-law are residing at Surat. Before marriage, the second respondent and the accused husband Sagar were knowing each other and on the proposal made by the husband, they tied the knot. The close family members of both the parties were present in the marriage. The applicants being parents were witness of the said marriage and stayed together with the husband and wife for sometime. It is in this background facts, the second respondent has alleged in the FIR that after four days of the marriage, the attitude of the husband and applicants turned hostile towards her and she was neglected on the petty issue. She has alleged that, she was harassed and tortured physically and mentally by the husband and in commission of the said act, the applicants have intentionally abetted and aided to their son. The sum and substance of the allegations made against the husband are that, he do not like her company and is not interested to keep the said relation further more and the husband made allegations on her characters and demanded

Rs.25,00,000/- to be brought from her parents. So far as role attributable to present applicants is concerned, it is alleged that to arrange marriage reception, they demanded Rs.25,00,000/-.

4. In the aforesaid facts and circumstances, after arrival at India, she lodged an FIR against her husband and his relatives for the aforesaid offences.
5. Mr. Nandish Thackar, learned counsel has submitted that, none of the incidents as alleged, have occurred in India and the applicants are not involved in any manner with the incident alleged and have been wrongly involved on account of matrimonial dispute between the husband and wife. That, due to marriage function, the applicants had stayed at Australia for some time and are permanent resident of City Surat at State-Gujarat. In such circumstances, the allegations made in the complaint are improbable and having been made with oblique motive. That the complainant has made too general and vague allegations in the FIR and applicants have been in a casual manner, without any specific instances of harassment having been arraigned as accused, which is nothing but sheer abuse of process of law.

6. In the aforesaid contentions, the learned counsel Mr. Nandish Thackar 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. Mr. Girish Parmar for Mr. Suraj Shukla has submitted that, the High Court at this stage, would not ordinarily enter into a disputed question of fact and therefore, when the allegations made in the FIR disclosed the commission of offence, the court may not quash it and allowed the investigation to be continued in the matter. He would further urged that, in the presence of the applicants, the second respondent was subjected to cruelty and they had extended their support to their son in the alleged act of cruelty and demand of dowry and there too have demanded Rs.25,00,000/- for reception party and same has been specifically disclosed in the FIR. Thus, therefore, at this stage, court may not examine the reliability or genuineness or the allegations made in

the complaint as same is the subject matter of trial.

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. 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.
12. 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.

13. Having considered the contentions raised by learned counsel for respective parties and on perusal of the allegations made in the FIR, this Court is of the considered view that, the applicants being parents of the husband Sagar has been unnecessary dragged in the alleged dispute of the husband and wife. They are permanent residents of Surat in Gujarat and to attend the marriage function, they went to Australia and stayed together for about two months. It is to be noted that, the parents of the second respondent were also remained in the Australia for about one and half month. Upon careful perusal of the contents of the FIR, it emerges that, before the marriage, the husband and wife knew each other and the said relationship entered into marriage. The first dispute arose in the party of one Simran, who happened to be a friend of accused husband. Most of the allegations are made against the husband to the effect that, she do not like the company of the second respondent and both were not comfortable in the company of each other. On one hand, she alleges that, her husband has demanded Rs.25,00,000/- for PR etc. and on the other hand, it is alleged that, for reception party, the applicants

demanded Rs.25,00,000/- to be brought by her from the parental house. In such circumstances, so far act of the cruelty is concerned, the allegations made against the applicants are too general and vague, which lacks the ingredients of offence - cruelty. The second allegation in relation to demand of Rs.25,00,000/- made against the applicants, is seems to be an afterthought. In the entire FIR, she has nowhere alleged that the parties have agreed to be given at or before or after the marriage the amount of Rs.25,00,000/-.

14. For the reasons recorded, this Court is of the *prima-facie* view that, within short span of time of marriage, the second respondent was not happy with the conduct and attitude of the husband in respect of day to day of their marriage life as well as daily household works, as a result, the applicants who were present there at Australia, have been arraigned as an accused, with intent to mounting pressure on the husband and the applicants to resolve the matrimonial dispute. In such circumstances, *prima-facie* it appears that, the FIR lacks the ingredients of the offence alleged. The allegations made against the applicants accepted in its entirety as it is, do not make out any offence and *prima-facie*, it appears that, the criminal proceedings qua the applicant having been instituted with ulterior

motive and to harass them.

15. 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.
16. 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.
17. Resultantly, the application succeeds. Rule made absolute. **FIR being CR No. 111210031220274 of 2022 registered with Mahila Police Station, Dist.: Surat City,** and other consequential proceedings thereto against present applicants are hereby quashed and set aside.

18. 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