

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE  
FIR/ORDER) NO. 4337 of 2022**

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KANTABEN RANCHHODBHAI PARMAR &amp; ANR.

Versus

STATE OF GUJARAT &amp; ANR.

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Appearance:

JIGNESHKUMAR M NAYAK(8558) for the Applicant(s) No. 1,2

MR TANMAY B KARIA(6833) 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 : 28/02/2024****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 **FIR being CR No.11216024220104 of 2022 registered with Kalol City Police Station, Kalol, Gandhinagar**, for the offences 498A, 323, 504, 114 of Indian Penal Code and under Section 4 of the Dowry Prohibition Act.
2. The applicants being neighbours have been arraigned as accused nos. 8 and 9 for the alleged offence of cruelty and demand of dowry. They are

residing near the house of the accused husband and due to their close association with the husband and his relatives, the second respondent wife has arraigned the applicants as accused, alleging against them that they have abetted and aided the act of cruelty allegedly committed by the husband and his relatives.

3. The present application has been preferred by the applicants stating therein that, they have been wrongly implicated in the offence and ingredients of the Section 498A are not attracted, as in any manner, they are not relative of the husband.
4. This Court has heard learned counsel Mr. J.M. Nayak, Mr. Tanmay Karia and Ms. C.M. Shah, learned Additional Public Prosecutor for the respective parties.
5. Mr. Nayak, learned counsel has submitted that, this is a classic example of misuse of process of law and court, as the applicants are not relatives of the husband and merely they being neighbors of the husband, the offence alleged is being registered against them and same deserves to be quashed and set aside.

6. On the other hand Mr. Tanmay Karia, reiterating the contents of the affidavit appearing for the second respondent has submitted that, the High Court at this stage, would not ordinarily entered 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.
7. 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.
8. 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.”*

9. 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.”.*

10. 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.

11. 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.
12. 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 have been wrongly arraigned as accused in the alleged offence, as they being neighbours of the husband and having their close association with them, the second respondent without any justifiable reason, arraigned them in the alleged FIR. Admittedly, the applicants are not in any manner related to the husband and other co-accused and they are well-wisher of the accused. In such circumstances, when the applicants are not falling within the meaning of 'relative of the husband of a woman', the ingredients of the offence cruelty are not attracted at all. Thus, the allegations made against the applicant 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 malafide and ulterior motive.

13. 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.
14. 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.
15. Resultantly, the application succeeds. **FIR being CR No.11216024220104 of 2022 registered with Kalol City Police Station, Kalol, Gandhinagar,** and other consequential proceedings thereto against

present applicants are hereby quashed and set aside.

16. 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.

P.S. JOSHI

**(ILESH J. VORA,J)**