

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 2037 of 2022**

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RASULMIYA AHEDMADBHAI SHAIKH & ANR.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

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

MS MEENA VYAS(3315) 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. 11191028210314 of 2021 (I- CR No. 85 of 2021) registered with Vejalpur Police Station, Dist.: Ahmedabad**, for the offences 498A, 323, 294B, 506(1) and 114 of Indian Penal Code and under Section 4 of the Dowry Prohibition Act.

2. This Court has heard learned counsel Mr. Nandish Thackar, Ms. Meena Vyas 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 Asmabanu Shaikh was solemnized on 20.11.2020 with Mohamad Rasul Miya, who is serving with Sardar Sarovar Nigam at Viramgam. The applicants are mother-in-law and sister-in-law of the second respondent. The second respondent has lodged an FIR against the husband and in-laws in relation to the act of cruelty and dowry. In the FIR she has alleged that, after two months of her marriage, she was mentally and physically harassed by husband and his relatives. The dispute arose between husband and wife with respect to preparation of the food, as the husband was not happy with the food prepared by the respondent wife and in the said act, the applicants used to support the husband. The second allegation is that, the accused hurled abusive and asked to bring Rs.3,00,000/- from the parental house and alleged that sufficient dowry having not been given at the time of marriage. It is in this background facts, on the last occasion i.e. on 22.03.2021, she was beaten by the husband, as he did not like the meal which she had prepared for him and she was driven out from the house.

4. Mr. Nandish Thackar, learned counsel has submitted that, this is a case of false implication and in absence of specific allegations against any one of the

applicants, except common and general allegations, no offence under Section 498A is made out. Thus, therefore, he would urge that, the implication of the applicants being made in a casual manner with oblique motive and same deserves to be quashed and set aside.

5. 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.
6. Ms. Meena Vyas, and Ms. Chetna Shah, have jointly 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.

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 accused husband was not happy and satisfied with the household works to be performed by the second respondent wife, as a result, the dispute on the petty issue arose in day to day life of the parties. The allegations qua the applicants seem to be general in nature, as on which date and in whose presence, the demand of Rs.3,00,000/- and dowry items were being asked by the applicants having not been disclosed in the FIR. There is no any allegation that the applicants used to harass the respondent physically. The only allegation qua the applicants is that, they have aided and abetted the act of cruelty allegedly committed by the husband. In such circumstances, the petty issue of the household works being given much importance by the second respondent and by making exaggerated version of the said incident and being aggrieved with the conduct and attitude of the husband, the questioned FIR is being filed, arraigning the applicants as accused. In such circumstances, prima-facie it appears that, the FIR lacks the ingredients of the offence alleged. 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. 11191028210314 of 2021 (I- CR No. 85 of 2021) registered with Vejalpur Police Station,**

Dist.: Ahmedabad, 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.

(ILESH J. VORA,J)

P.S. JOSHI