

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 4445 of 2022**

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SANKET SURESHBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

ANKEETA A RAJPUT(9408) for the Applicant(s) No. 1,2,3,4

MR. SURAJ A SHUKLA(7185) for the Respondent(s) No. 2

MS CM SHAH, APP for the Respondent(s) No. 1

VIJAYKUMAR G VANRAJ(8826) for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 16/01/2024

ORAL ORDER

1. Ms.Ankita Rajput, learned counsel, upon instructions so far as husband Sanket Suresh Patel is concerned, does not press this application. The application qua husband applicant no.1 is therefore stands dismissed as not pressed.

2. This quashing petition is filed by the applicants who are facing the criminal prosecution for the offence punishable under Sections 498(A), 323, 504, 506(2) and 114 of the Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act.

3. The applicants are husband, father in law, mother in law and maternal father in law of the respondent no.2-wife. The respondent – wife lodged a criminal complaint with Mahila Police

Station, Vadodara City for the aforesaid offences. The marriage of the parties was solemnized on 29.01.2015. Admittedly, after one month of the marriage, the husband accused Sanket Patel and respondent wife left Prantij City and settled at Vadodara. The respondent wife belongs to Vadodara. The husband accused no.1 had joined the business of the father in law. Since 2015-2019, they were stayed together at Vadodara. It is alleged that she was subjected to cruelty by the husband and his relatives. It is alleged that the parents of the husband intentionally did not return her gold jewellery and other items given at the time of marriage. They did not like the birth of female child and on this ground, she was harassed mentally and physically. The eyes of the husband was on the parents' property and their business and after the birth of the daughter, he neglected in taking care and maintenance of her as well as daughter.

4. Pursuant to the FIR, chargesheet came to be filed for the aforesaid offences.

5. In the aforesaid facts, the applicants have preferred this quashing application *inter alia* alleging that the allegation lacks the ingredients of Section 498(A) of the Indian Penal Code and

the same does not constitute an offence as alleged and the criminal proceedings has been instituted to harass and humiliate them in the society and the same is nothing but a gross of misuse of process of the law and Court.

6. Ms.Ankita Rajput, referring to the allegations made in the FIR, has submitted that the proceedings is maliciously instituted with ulterior motive for wreaking vengeance on the applicants as the entire proceedings based on the false, inherently improbable allegations with a clear intention to falsely involve in a criminal case to defame them in the society. That the applicants never shared Vadodara house with the complainant. That since long, they are residing at Prantij and it was not possible for them to live at Vadodara because of their service. That the maternal father in law has nothing to do with the said matrimonial dispute as he is residing at Ahmedabad and with a view to mounting pressure, he has been falsely roped in the offence. That the allegations are general and omnibus allegations which do not attract ingredients of Section 498(A) and Dowry Prohibition Act.

7. In view of the aforesaid contentions, Ms.Rajput, learned counsel has submitted that the allegations made against the

applicants, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence and therefore, when the proceedings is maliciously instituted, the Court must ensure that the criminal proceedings is not used as an instrument or for seeking private vendetta with ulterior motive to pressure the accused and therefore, this is a fit case to exercise the inherent powers to prevent misuse of process of the law and Court.

8. On the other hand, learned counsel Mr.Suraj Shukla, appearing for the respondent – wife, referring to the contentions of the affidavit in reply, has submitted that there is a specific allegation that after the marriage, she was continuously being mentally and physically tortured and harassed by the applicants herein and when the applicants used to come at Vadodara, the wife was subjected to harassment on the issue of birth of daughter and jewelry which were given at the time of marriage having been misappropriated with ulterior motive. In such circumstances, Mr.Shukla, submitted that considering the allegations made against the applicants, the ingredients of the alleged offence are made out and therefore, this is not a stage to enquire as to the reliability of genuineness of the allegations

made in the FIR.

9. In view of the aforesaid contentions, learned counsel Mrs.Shukla and Ms.Maithili Mehta, learned APP, opposing the application, have jointly submitted that no extraordinary circumstances exists to exercise the inherent powers and therefore, the application deserves to be dismissed.

10. 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.

11. 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.”

12. 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.”.

13. 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.

14. 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.

15. Having heard learned counsels for the respective parties, the issue falls for consideration is whether the case is made out for quashing the criminal proceedings by invoking the extraordinary jurisdiction of this Court.

16. I have careful considered the FIR and chargesheet case papers. On perusal of the papers, this Court is of the considered opinion that the criminal proceedings instituted against the applicants with malafide and ulterior motive. Admittedly after the marriage, the respondent wife and accused no.1-husband left Prantij for Vadodara and since 2015, the applicant nos.2 and 3 living separately at Prantij, whereas the applicant no.4 who is maternal father in law has nothing to do with the said matrimonial dispute as he is residing at Ahmedabad and despite of these facts, he has been roped in the alleged offence, without their being any specific instances of harassment. In the FIR, which runs into five to six pages, nothing found against the applicants to attract the ingredients of Section 498(A) and Sections 3 and 7 of the Dowry Prohibition Act. The respondent wife has not specifically alleged that despite of demand of

ornaments, the applicants have refused to handover it. The wife has made the allegations against the husband that he has neglected the daughter and failed to maintain her in a proper manner. Thus, therefore, it prima facie appears that due to matrimonial dispute with the husband and in order to settle the said dispute after delay of two years, the applicants have been implicated without allegations of their active involvement, by making the general and omnibus allegations, the FIR was being lodged. Thus, this Court is convinced that the attempt on the part of the respondent wife is to use the criminal proceedings as a weapon of harassment against the applicants and same is nothing but amount to misuse of process of law and Courts.

17. For the reasons recorded and considering the role attributed to present applicants herein, 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 reported (1992 Suppl. (1) SCC 335) and therefore, if the criminal proceedings is allowed to continue, so far as applicants are concerned, it would nothing but an abuse of process of law and travesty of justice and this is a fit case to exercise inherent powers for the purpose of quashing of the FIR and consequential proceedings thereof.

18. Resulently, the application is **allowed** qua applicant nos.2 to 4. FIR being C.R.No.11196001220033 of 2022 registered with Mahila Police Station, Vadodara City and consequential proceedings thereof qua the applicants are quashed. The observations made herein are tentative in nature. The learned Trial Court is at liberty to proceed against the husband, in accordance with law. Direct Service is permitted.

Rakesh

(ILESH J. VORA,J)