

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 17189 of 2022**

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JINIYA JAYESHBHAI MANUBHAI

Versus

STATE OF GUJARAT

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Appearance:

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

NOTICE SERVED 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 : 06/02/2024****ORAL ORDER**

1. By invoking inherent powers of this Court under Section 482 of the Cr.P.C., the applicant Jayeshbhai Manubhai has preferred this application for quashing of the FIR being **CR. No. 11190007220019 of 2022 registered with Mahila Police Station, Botad**, for the offences punishable under Section 498A, 323 and 504 of the Indian Penal Code.
2. Brief facts of the present case are that, the marriage of the applicant with private respondent was solemnized in the year 2012 and thereafter, they were residing together at city Botad. The matrimonial dispute arose between the parties mainly on the ground that, the applicant husband was suspecting

the character of the private respondent and on that ground, he was used to beat her and hurled abusive. In these background facts, she has lodged an FIR on 29.08.2022.

3. Pursuant to said FIR, the applicant husband is before this Court for quashing of the proceedings on the ground that, the contents of the FIR are false and frivolous and on reading of it, the offence of cruelty is not made out and same is filed for the defense in the case of rape filed against one Ashok Parmar with whom the private respondent having extra marital affairs.
4. This Court has heard learned counsel Mr. J.M. Nayak appearing for the applicant.
5. The private respondent Ektaben Jayeshbhai, though served, has chosen to remain absent from the proceedings.
6. Mr. Nayak, learned counsel has submitted that after the marriage, the respondent wife was in relationship with Ashok Parmar, resident of Botad. The private respondent came into contact in June 2022 with him, as he being a police official, the private respondent was under his influence and both have maintained

physical relationship. The applicant being a husband scolded the wife for such relationship and asked her not to maintain relationship. The wife was not agreed to the advice given by her husband and lodged the questioned FIR against him alleging the false and concocted version of the alleged harassment referred in the FIR. In that view of the matter, Mr. Nayak would urge that, after filing of the questioned FIR, the relationship of private respondent and Mr. Ashok Parmar became strain. The private respondent filed a private complaint before the Magisterial Court against Ashok Parmar for the act of rape, assault etc. and same is pending for further inquiry before the Court.

7. In the aforesaid circumstances, learned counsel Mr. Nayak would urge that, the proceedings of the FIR is being filed with oblique motive and to harass the applicant and this is a fit case to exercise inherent powers to prevent the abuse of process of law and court.
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. Having regard to the facts and circumstances of the present case, the issue falls for my consideration is

whether the case is made out to quash the proceeding of the questioned FIR by exercising inherent powers of this Court under Section 482 of the Cr.P.C?

12. Having considered the contentions raised by the learned counsel for the applicant and on perusal of the contents of the FIR as well as the private complaint filed by private respondent, for alleged offence of rape against one Ashok Parmar, it emerges that, the private respondent was in relationship with Mr. Parmar, who is in police department. The uncontroverted allegations made in the private complaint filed by the private respondent, it reveals that, for a domestic work, she was came into contract with Mr. Parmar and thereafter, both have maintained physical relationship. In these background facts, it was the natural conduct of the husband to cautioned her wife about the said relationship. Thus, therefore, considering the conduct of the private respondent, it can be inferred that, the respondent wife being aggrieved with the natural conduct of the husband, has resorted to file alleged FIR. Thus, prima-facie it appears that in order to defend herself, the allegations of cruelty being falsely alleged in the FIR.

13. For the aforementioned reasons, prima-facie this Court is of the considered view that the allegations made in the FIR, accepted as it is, do not make out any case against the applicant. Where the criminal proceedings instituted with malafide or otherwise an abuse of process of the Court, the Court must ensure that the proceedings is not used as an instrument or for seeking private vendetta.
14. Thus, therefore, the case is made out for exercising inherent powers of this Court and this court is convinced that, the continuation of the proceedings would amount to abuse of the process of court and law.
15. Resultently, the application succeeds. The FIR being **CR. No. 11190007220019 of 2022 registered with Mahila Police Station, Botad** and other consequential proceedings thereto are quashed and set aside.

P.S. JOSHI

(ILESH J. VORA,J)