

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 6673 of 2022**

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THAKOR CHELAJI GABHAJI
Versus
STATE OF GUJARAT

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Appearance:

MR VIJAY H NANGESH(3981) for the Applicant(s) No. 1,2
MS CM SHAH APP for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 22/01/2024

ORAL ORDER

1. By way of this application filed under Section 482 of the Cr.P.C. , the applicants seek to invoke inherent powers of this Court for quashing of the **FIR in CR. No. 11206020220371 of 2022 registered with Kadi Police Station, Dist.: Mehsana**, for the offences punishable under Sections 498A, 494, 323, 506(2) and 114 of the Indian Penal Code.

2. This Court has heard learned counsel Mr. Vijay Nangesh and learned Additional Public Prosecutor Ms. C.M. Shah for the respondent State. The private respondent, who has lodged the FIR, though served, is not appeared nor filed reply affidavit.

3. Brief facts giving rise to file present application are that, the marriage of the private respondent with Thakor Kishanji Chelaji was solemnized before 8 years of the date of the registration of the FIR. The private respondent went to matrimonial home where she had lived in a joint family. The husband having extra marital affairs with one Hiralben, as a result, the marriage life took a serious turn and she was compelled to leave the matrimonial home. The parties have executed the customary divorce deed on 28.02.2022. The FIR in question came to be filed on 28.03.2022 against the husband, brother-in-law, mother-in-law and father-in-law, inter-alia, alleging that, she was subjected to mental and physical harassment by the husband and in-laws. So far as role attributable to present applicants are concerned, who are mother-in-law and father-in-law, it is alleged that, they are supporting the husband, who got married with Hiralben.
4. Mr. Vijay Nangesh, learned advocate appearing for the applicants has submitted that, the FIR is absolutely false and frivolous and on reading of the office as alleged, is clearly not made out and same is instituted with malafide and ulterior motive. That the applicants are mother-in-law and father-in-law have nothing to do with the extra marital affairs

maintained by their son. He invited the attention of this Court about the customary divorce allegedly executed by the wife and contended that, after one month of the said divorce, the FIR is being lodged against the applicants, which shows the malafide intention on her part. Thus, therefore, he would urge that, the applicants have been falsely implicated by making general allegations without their being any specific instances of harassment. In such circumstances, he would submit that so far applicants are concerned, no offence is made out and thus, considering the allegations leveled in the FIR, if they are accepted as it is, no offence is made out and this is a fit case to exercise inherent powers to prevent the misuse of the court and law.

5. On the other hand Ms. C.M. Shah, learned State counsel has submitted that, the factual aspect as canvassed by the applicants cannot be examined at this stage and thus, considering the allegations leveled against the applicants, prima-facie, offence as alleged is made out.
6. Having heard the learned counsel for the respective parties and on perusal of the allegations leveled in the FIR, the issue falls for my consideration is whether case is made out to quash the questioned

FIR by invoking inherent powers of this Court under Section 482 of the Cr.P.C?

7. Before advertiring to the submissions made hereinabove, it is necessary to refer the settled law on the aspect of quashing the criminal proceedings, more particularly when the allegations pertaining to matrimonial dispute.
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 channelized 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. 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.

13. In light of the settled position of law and considering the allegations leveled in the FIR against the applicants, it appears that there is no specific allegation of mental and physical harassment alleged against the applicants. On perusal of the contents of the FIR, it is nowhere mentioned by the wife on which date the husband got married with the lady referred in the FIR. The terms and condition of the customary divorce deed dated 28.02.2022 expressly gives right to either party to remarriage. So far role of applicants are concerned, they being parents of the husband, have nothing to do with the independent decision of remarriage taken by the husband. In these background facts, this court of the considered view that, the criminal proceedings after one month of the customary divorce implicating the applicants, is manifestly attended with malafide intention and the allegations in the FIR made against the applicants do not prima-facie constitute offence against the applicants.

14. For the reasons recorded this Court is in agreement with the contentions raised by Mr. Vijay Nangesh, learned counsel for the applicants and therefore, where the prosecution instituted maliciously, it is paramount duty of the court is to see that the persons, who are absolutely innocent are not subjected to prosecution and humiliation on the basis of false and wholly untenable FIR.
15. 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.
16. Resultantly, the application succeeds. Rule made absolute to aforesaid extent. The **FIR in CR. No. 11206020220371 of 2022 registered with Kadi Police Station, Dist.: Mehsana**, and other consequential proceedings thereto qua present applicants are quashed and set aside.
17. The views expressed hereinabove are confined to the case of present applicants herein. The trial Court shall decide the case of the husband in accordance

with law without being influenced by the observations made hereinabove.

(ILESH J. VORA,J)

P.S. JOSHI