

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 12306 of 2022**

**DIPALBEN JAGIRKUMAR PATEL
Versus
STATE OF GUJARAT**

Appearance:

MR CB DASTOOR(238) for the Applicant(s) No. 1
MR MANISH J PATEL(2131) for the Respondent(s) No. 2
MR RITESH B DAVE(2815) for the Respondent(s) No. 2
MS CM SHAH, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 11/01/2024

ORAL ORDER

1. By way of this application, under Section 482 of the Cr.P.C., the original accused no. 4 Dipalben Jagirkumar Patel seeks to invoke inherent powers of this Court, praying quashing of FIR being I-CR. No. 11191022220649 of 2022 registered with Ishanpur Police Station, Ahmedabad for the offence punishable under Sections 498A, 294B, 106(2) and 114 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.

2. This Court has heard learned counsel Mr. C.B. Dastoor, Manish Patel and Ms. Chetna Shah, learned State Counsel for the respective parties.

3. The private respondent Krishna Nilesh Patel has lodged a criminal complaint for the offence of cruelty and dowry demand.

The marriage was solemnized on 18.01.2022 at village Borsad, Dist.: Anand. The husband Nilesh Patel and his parents as well as the applicant – sister are permanent resident of Canada and for the marriage purpose, the husband and his parents came to India in the month of January, 2022. The applicant being a sister-in-law and resident of Canada, could not attended the marriage and in her absence, marriage was solemnized. During four months of the marriage span, the matrimonial dispute cropped up in relation to the VISA for Canada. According to case of private respondent complainant, the husband and in-laws used to demand Rs.20,00,000/- for VISA expenses as well as for getting permanent residence of Canada. The applicant herein along with her husband came to India in the month of February, 2022 for social purpose and their stay was extended upto August, 2022. The issue of VISA and permanent residence of Canada was become serious and on that ground, the respondent wife left the matrimonial home. In the FIR, she alleges that the husband and his parents harassed her and asked to bring Rs.20,00,000/- from her father and considering the economic situation of the parents, she could not manage the said amount. So far, role of present applicant – sister-in-law is concerned, it is alleged that when she was in India, she abated the principal

accused in relation to demand of dowry.

4. In the aforesaid facts, the applicant herein has preferred present application for quashing of the criminal proceedings.

5. Mr. C.B. Dastoor, learned counsel appearing for the applicant has submitted that, the FIR is absolutely false and frivolous and on reading of it, the offence of cruelty is clearly not made out. He would further submits that the applicant was not part of the marriage ceremony and when she came to India for religious purpose, she has been roped without their being any specific allegation of harassment and therefore by disclosing the exaggerated version of the incident, the applicant with malafide intention and mounting pressurize on her, she has been falsely implicated in the offence and therefore, where the plain reading of the FIR do not disclose commission of the offence, the court in its inherent powers may exercise its discretion to quash the criminal proceedings, which has been filed by misusing the process of law and court.

6. On the other hand, learned counsel Mr. Manish Patel and State Counsel opposed the quashing of the proceedings and contended that, the after short span of the marriage, the

husband left the India and thereafter, neglected the wife as he and his family failed to manage for VISA for the Canada. They further submitted that the FIR prima-facie reveals the commission of cruelty. The husband and his relatives has demanded Rs.20,00,000/- for VISA process, which itself shows that she was harassed to meet unlawful demand. They further submitted that the applicant herein has abated the principal accused in demanding the cash amount and therefore, considering the role of the present applicant herein, prima-facie case for the offence is made out and in that view of the matter, considering the settled principles of quashing, the court should not exercise its jurisdiction.

7. Having heard the learned counsel for the respective parties and on perusal of the contents of the FIR, the issue falls for my consideration is to whether the case is made out for invoking inherent powers of this Court?

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 uncontested 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 Kakhashan 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. 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.

12. 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.

13. After careful reading of the allegations made in the FIR, this Court is of considered view that the applicant being a sister-in-law has been falsely implicated in the alleged offence. The private respondent was having serious dispute with the husband and his parents in relation to the VISA and PR for the Canada. In the entire FIR, there is no direct demand made by the applicant to bring Rs.20,00,000/- for VISA and PR purpose. She was not part of the marriage ceremony. The applicant came to India in the month of February, 2022 for religious purpose and when she was in India, the FIR came to be filed against four persons. In such circumstances, it is a case of over implication and she has been implicated casually by making general and omnibus allegations. Thus, this Court is convinced that qua the applicant prima facie no offence

is made out and if the proceedings would permitted to continue, then the same would be misuse of the process of the Court. The Apex Court in its various judgments, time and again, observed that Section 482 of the Code of Criminal Procedure, 1973 is designed to achieve the purpose for ensuring that criminal proceedings are not permitted to generate the weapons of harassment.

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. Resultently, the application succeeds and is **allowed**. The FIR being I-CR. No. 11191022220649 of 2022 registered with Ishanpur Police Station, Ahmedabad and other consequential proceedings thereto are quashed and set aside.

16. 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)

Rakesh