

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 10933 of 2022**

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MUMTAZBIBI MAHEBUBBEG MIRZA
Versus
STATE OF GUJARAT

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Appearance:

MR JOHNSEY P MACWAN(5498) for the Applicant(s) No. 1,2,3,4,5
HCLS COMMITTEE(4998) for the Respondent(s) No. 2
MS.AKSHITABA SOLANKI(6782) 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 : 08/02/2024
ORAL ORDER

1. By invoking inherent powers of this Court, the applicants – original accused have preferred this application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the FIR being C.R.No.11215021220228 of 2022 registered with Petlad Town Police Station, Dist.: Anand for the offences punishable under Sections 498(A), 323, 504, 506(2) and 114 of the Indian Penal Code, read with Sections 3 and 4 of the Dowry Prohibition Act, 1961.

2. Brief facts leading to file present application are that on 09.11.2020, the marriage of the private respondent Farhin Banu Malek was solemnized with Rifakat Beg and thereafter, she went to her matrimonial home at Petlad. The applicants are mother in law and sisters in law. The applicant nos.3, 4 and 5 are living separately at their matrimonial home as their marriage took place prior to the marriage of the second respondent. The second

respondent gave a birth a baby-boy. Till the birth of the child, everything was normal. Thereafter, the dispute arose between the husband and wife as according to case of the second respondent, the husband was suspecting on her character and put on her restriction and she was prevented to visit the market, etc. In these background facts, by lodging the FIR against six persons including the husband, the second respondent has alleged that she was subjected to physical and mental cruelty by the accused. So far as applicants are concerned, it is alleged that they instigated the husband in commission of the act of the cruelty.

3. Pursuant to the registration of the FIR, the mother in law and four sisters in law have preferred this application *inter alia* stating that the second respondent wife has misused the police machinery and lodged a false and frivolous FIR without their being any active role on their part.

4. This Court has heard learned counsel Mr.J.P. Mackwan for the applicants, Ms.Akshitaba Solankim, learned counsel for private respondent and Ms.C.M. Shah, learned APP for the respondent – State.

5. Mr.Mackwan, learned counsel for the applicants has submitted that the applicants are absolutely innocent and have not committed any offence as alleged and the allegations against them are vague and general in nature and except the bald statement of demanding dowry and harassment, there is no specific instances of the harassment being disclosed which is

evident that this is a case of false implication and therefore, on reading of the FIR, the offence of cruelty as well as the demand of dowry is not made out.

6. In view of the aforesaid contentions, learned counsel Mr.Mackwan has submitted that the parameters laid down by the Apex Court for quashing of the criminal proceedings laid down in the case of Bhajanlal, the present case would fall under the said parameters and therefore, this is a fit case to quash the FIR by exercising inherent powers of this Court.

7. On the other hand, opposing the application, Ms.Akshitaba Solanki, learned counsel for private respondent has submitted that the contentions raised herein are the subject matter of the trial and at this stage, disputed question of facts cannot be examined and thus, this Court may not examine the reliability or genuineness of the allegations made in the FIR. Thus, she would urge that the allegations made in the FIR discloses the commission of the offence and in that view of the matter, no case is made out to quash the proceedings.

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 regard to the facts and circumstances of present case, the issue falls for consideration is whether the case is made out for quashing the FIR by invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973.

13. On the facts on hand, it is not in dispute that before the marriage of the second respondent, there sisters in law i.e. applicant nos.3, 4 and 5 have already got married and since then, they are living separately at Petlad Town with their respective families. Thus, therefore, so far as three married sisters in law are concerned, the allegations made against them in a casual manner and nothing brought on record to establish that the married sisters have played an active role to instigate the husband for the commission of the act of cruelty, etc. In such circumstances, the implication of the three married sisters in law in the alleged offence having been made with oblique and *malafide* intention.

14. On careful reading of the FIR, it appears that the second respondent was not happy with the husband i.e. accused no.1 as he was suspecting on her character and that is the root cause for the marital discord. In such circumstances, the allegations made against the mother in law and sister in law Raishabanu are in nature of general and omnibus and no specific role being assigned to them.

15. For the aforesaid reasons, this Court is of the *prima facie* view that the allegations contained in the FIR qua the applicants, even if given face value and taken to be correct in their entirety, do not make out any offence and therefore, in such circumstances, this Court is convinced that if the criminal proceedings is allowed to continue qua the applicants, then it would nothing but a sort of abuse of process of law and Court.

16. 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.

17. Resultantly, the application succeeds and is **allowed**. The FIR being C.R.No.11215021220228 of 2022 registered with Petlad Town Police Station, Dist.: Anand and other consequential proceedings thereto are quashed and set aside.

18. The view expressed hereinabove are tentative in nature and confined to the adjudication to the present application. The Trial Court shall not get influence by the said observations during the course of trial.

(ILESH J. VORA,J)

Rakesh