

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 14098 of 2022**

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KANDRAPBHAJ SATISHBHAI JOSHI
Versus
STATE OF GUJARAT

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Appearance:

MR DHARM K RAVAL(10689) for the Applicant(s) No. 1,2,3,4,5
MS NAMRATA U BHATT(10933) for the Applicant(s) No. 1,2,3,4,5
MS CHETNA SHAH, APP for the Respondent(s) No. 1
SUDHANSU A JHA(8345) for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 30/01/2024

ORAL ORDER

1. By this application under Section 482 of Cr.P.C., the applicants seek to invoke inherent powers of this Court to quash the criminal proceedings instituted for the offence punishable under Sections 498A, 323, 294(b), 506(2) and 114 of the Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act.
2. **Rule.** Learned advocates appearing for the respective respondents waive service of rule for the respective respondents.
3. The brief facts giving rise to file present application are that, an FIR being C.R. No.11195006220022 of 2022 came to be filed by the private respondent for the offence of cruelty and demand of dowry. The marriage of private respondent with

Chintan Joshi was solemnized on 22.05.2010. The respondent-wife went to matrimonial home to perform the marriage obligation. The family is joint family. The husband-Chintan is serving at Ahmedabad. Out of the wedlock, two children i.e. daughter Devarshi and son Ruhan were born out. The father-in-law is serving with District Panchayat, Himmatnagar, whereas, mother-in-law is serving as a teacher. The sister-in-law Rinkalben Bhaveshkumar is settled at Bombay and since her marriage, she is residing there with her family. The matrimonial dispute arose between the husband and wife as the private respondent-wife insisted the husband to keep her with him at Ahmedabad where he is working, but somehow it could not materialized. The respondent-wife in the FIR has alleged that, after the birth of daughter, the in-laws wants a male child and in the second delivery though she gave birth to a male child, but the child was born with minor disability and for that reason, the in-laws were not happy. The second allegation raised is that, the husband and his relatives forced the wife to bring Rs.20 to 25 lakhs from her parental home. In such circumstances, she has alleged that, she was subjected to mental and physical torture by the husband and his relatives. So far sister-in-law is concerned, it is alleged that whenever she used to come at Himmatnagar, she always instigate the in-laws in demanding the cash amount. The third allegation is that, the husband asked to give divorce for which wife has denied to give divorce, as a result, the husband and in-laws hurled abuses and used to beaten her. The accused Kandarp Joshi and Mukesh Jani are distant relatives and the only role attributed to them is that they act as a mediator to resolve the

dispute when the meeting was called by the community people. It is further alleged against two distant relatives that, they used to come at her matrimonial home and pressurize her to give divorce.

4. In the aforesaid facts and circumstances, the private respondent lodged an FIR implicating therein six persons who are sister-in-law, father-in-law, mother-in-law and two distant relatives as well as the husband Chintan Joshi.

5. Pursuant to registration of FIR with the Mahila Police Station, Palanpur, the applicants have preferred this application praying *inter alia*, that, the FIR is filed to harass and humiliate the entire family as well as the persons who have nothing to do with the matrimonial dispute and are totally innocent. That, the allegations against the applicants are extremely general in nature which do not attract the ingredients of alleged offences and after ten years of marriage, the demand of Rs.20 lakhs cannot be believed and there is no any basis that why such kind of amount demanded by the applicants. In such circumstances, by invoking inherent powers of this Court, the applicants have prayed that the proceedings is nothing but amounts to abuse of process of law and Court and same may be quashed and set aside.

6. This Court has heard Mr. Dharm Raval, learned counsel for the applicants, Ms. C.M. Shah, learned Additional Public Prosecutor for the respondent-State and Mr. Sudhanshu Jha, learned counsel for respondent no.2.

7. Mr. Dharm Raval, learned counsel for the applicants has submitted that the private respondent has narrated the petty domestic issue in exaggerated version of the incident. The applicants who had acted at the instance of community, have been roped in without there being any active role on their part in respect of alleged act of cruelty and demand of dowry. The sister-in-law is settled at Bombay and despite of knowing very well by the respondent-wife that since long, she is living at her matrimonial home, she has been wrongly implicated without there being any specific allegation. The mother-in-law and father-in-law who are Government employees, have nothing to do with the marital discord of the husband and wife and they have been roped in with a malafide intention and to defame them in the society. In such circumstances, he would urge that, the allegations of cruelty and demand of dowry, do not *prima facie* constitute any offence as alleged against the applicants.

8. In the aforesaid contention, learned counsel has submitted that, the private respondent has used criminal machinery as an instrument to pressurize the applicants and in that view of the matter, to prevent the misuse of process of law, this Court may exercise its inherent powers to quash the proceedings.

9. Opposing the application, learned counsel Mr. Sudhanshu Jha appearing for respondent no.2-complainant has stated that, the allegations disclosed the commission of offence and therefore, the contention raised cannot be examined at this stage and the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the

allegations made in the FIR. Referring to the contention of the FIR, he would urge that, there is specific allegation against the accused for alleged cruelty and demand of dowry and she was beaten by the applicants which led her to leave the house. In such circumstances, no extraordinary circumstances exist to exercise inherent powers of this Court.

10. Having regard to the facts and circumstances of the present case and on perusal of allegations made in the FIR, the issue falls for my consideration is whether case is made out to quash the questioned FIR by exercising inherent powers of this Court 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 Kakkashan 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. In light of the settled legal position and considering the peculiar facts and circumstances of the present case, this Court is of considered view that, the husband Chintan Joshi has

not filed a quashing petition. The applicants are in-laws and distant relatives. The respondent-wife after completion of ten years of her marriage alleged that she has been subjected to cruelty by the husband and his relatives. Before registration of FIR, the community people as well as the police authority had tried their level best to resolve the matrimonial dispute and at one point of time, the husband and wife agreed to live separately at the first floor of the house and husband was directed to pay monthly expenses to the wife, but somehow that formula could not work. The accused no.1 and 2 i.e. applicants no.1 and 2 who are distant relatives and they had participated in the conciliation proceedings held by the community people. Thus, therefore, so far their role is concerned, *prima facie* it appears that they have been falsely implicated in the alleged offence and allegations for abetment are not attracted. So far sister-in-law-accused no.3 is concerned, she is permanent resident of Bombay and the allegations made against her is inherently improbable and false. So far parents of husband are concerned, the allegations made against them are extremely general and omnibus and on reading of entire FIR, it can be inferred that, they have been implicated because they are parents and they failed to reconcile the dispute of the respondent-daughter-in-law. Thus, therefore, the dispute of residing the husband at Ahmedabad is the root cause for which *prima facie* this Court is of considered view that, the husband failed to manage the matrimonial affairs with the respondent-wife.

16. For the reasons aforementioned, this Court is of

considered opinion that, the allegations made in the questioned FIR against the applicants, accepted as it is, do not *prima facie* constitute any offence much less an offence of cruelty and demand of dowry against the applicants. In such circumstances, it is the duty of the superior Court to see that the person who is absolutely innocent is not subjected to prosecution and humiliation on the basis of false and wholly untenable complaint. It is relevant to refer to and rely upon the observations made by the Apex Court in the case of *Hasmukhlal D. Vora vs. State of Tamil Nadu* reported in 2022 *LiveLaw (SC) 1003*:

"27. At the cost of repetition, we again state that the purpose of filing a complaint and initiating criminal proceedings must exist solely to meet the ends of justice, and the law must not be used as a tool to harass the accused. The law, is meant to exist as a shield to protect the innocent, rather than it being used as a sword to threaten them.

The law is a sacrosanct entity that exists to serve the ends of justice, and the courts, as protectors of the law and servants of the law, must always ensure that frivolous cases do not pervert the sacrosanct nature of the law."

17. 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.

18. Resultantly, the application succeeds. The FIR being C.R. No.11195006220022 of 2022, registered with Mahila Police

Station, Palanpur, District: Banaskantha and other consequential proceedings thereto are quashed and set aside qua the applicants herein.

19. 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. Direct service is permitted.

(ILESH J. VORA,J)

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