

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 7061 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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JYANTILAL VADILAL SHAH & 1 other(s)

Versus

STATE OF GUJARAT & 1 other(s)

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Appearance:

MS.YOGINI H UPADHYAY(6695) for the Applicant(s) No. 1,2

MOHINI H DAVE(7849) for the Respondent(s) No. 2

MR SOAHAM JOSHI, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT**Date : 22/06/2023****ORAL JUDGMENT**

1. This application is filed under Section 482 of the Code of Criminal Procedure, 1973 ('the Code' for

short) praying to quash the FIR registered as C.R.No.I-110 of 2016 with GIDC Vatva Police Station, Ahmedabad city for the offences punishable under Sections 498(A), 323 and 114 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

2. The brief facts leading to filing of this application are such that the son of the applicants married the respondent no.2 on 28.2.2000 and thereafter, after some time, the applicants started demanding dowry and started to harass the complainant more and more. It is stated that due to illicit relation of her husband with one lady, the things went more worse and we started living separately from the in-laws i.e. the present applicants. It is stated that as the respondent no.2-complainant started opposing her husband about the illicit relation, he started beating the complainant. Thus, the impugned complaint was filed against her husband, in-laws i.e. the present applicants and the lady with whom, the husband of the complainant had alleged illicit relations. It is this FIR which is sought to be quashed in this application.

3. At the outset, it is to be mentioned that the applicant no.1-accused no.2, who is father-in-law of the complainant has expired and the application is abated qua applicant no.1. So, now, the application is required to be considered for applicant no.2 who is accused no.3 and mother-in-law of the respondent no.2-complainant.

4. Heard learned advocates for the parties.

4.1 Learned advocate for the applicant has submitted that there is no serious allegation against the present applicant from the entire FIR which remotely connects the present applicant with the offence. The allegations, substantially, are against accused no.1 and accused no.4. The present applicant is wrongly dragged in litigation by making some general allegation against her. She has also submitted that considering the age of the present applicant who was 80 years at the time of filing of this application and considering the fact that she is lady accused, continuing with such criminal proceedings which may cause great harassment to her, that too, after death of her husband i.e. accused no.2. She further stated that even from the papers of the

chargesheet, no material which directly connects the present applicant in commission of alleged offence is found and therefore she prays to allow this application and quash the impugned FIR qua the present applicant, as it is nothing but abuse of process of law.

5. *Per contra*, learned advocate for the respondent no.2-complainant has strongly opposed the prayers made in the present application by saying that the complaint is filed in the year 2003 and in the year 2004, the present applicant has preferred application for quashing which was dismissed by this Court. On perusal of such order, this Court found on 24.6.2004, this Court has passed the order in Criminal Miscellaneous Application No.1486 of 2004 whereby the application was dismissed for want of prosecution but it was not decided on merits.

5.1 Learned advocate for the complainant has also drawn my attention towards the affidavit-in-reply filed by the complainant and submitted that serious offences are made out against the present applicant even by filing separate FIR filed under Section 465, 460, 471 and 114 of the Indian Penal Code before the CID Crime

Ahmedabad and therefore also considering the averments made in the impugned FIR, there is direct involvement of the present applicant found and therefore this Court should not exercise powers under Section 482 of the Code. Moreover, she has submitted that now the trial is also commenced and therefore this Court should not exercise powers under Section 482 of the Code.

5.2 Learned APP has also opposed this application as now the trial is already commenced and prima facie specific allegation is made in the FIR which is supported by filing of the chargesheet.

6. I have considered the rival submissions and perused the material on record. From the bare reading of the FIR, it transpires that the main allegations are pertaining to offences registered under Sections 498A, 323 and 114 of the IPC read with Section 4 of the Dowry Prohibition Act, which are prima facie not made out against the present applicant as general allegations are made against the applicant and main allegations are alleged against accused nos.1 and 4. It also seems that the present applicant is wrongly dragged in the said FIR

as she happens to be the mother-in-law of the complainant. The age of the applicant is also required to be seen, she was aged 80 years at the time of filing of this application in the year 2017 and at present, she must be of 86 years. Even looking to the age factor and the fact that general allegations are levelled in the FIR only to make sure that she is roped in the FIR, continuing these proceedings will amount to abuse of process of law and no fruitful purpose will be served in continuing the same.

7. In the case of *Bhajanlal & Ors. (supra)*, the Hon'ble Supreme Court has settled the guidelines when the Court can exercise powers under Section 482 of the Code, the relevant paragraph reads as under:

“In the backdrop of the interpretation of the various relevant provisions of the Code under Ch.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 Art.226 or the inherent powers under sec.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 sec.156(1) of the Code except under an order of a Magistrate within the purview of sec.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 sec.156(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 concerned Act (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 concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide 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.”

8. It is also relevant to refer to the judgment of the Hon'ble Apex Court in the case of *Inder Mohan*

Goswami and Another versus State of Uttaranchal reported in (2007) 12 SCC 1, more particularly para : 23 & 24 thereof, which read as under :

“23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Sec. 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Sec. 482 CrPC can be exercised:

[(i) to give effect to an order under the Code;]

[(ii) to prevent abuse of the process of court, and]

[(iii) to otherwise secure the ends of justice.]

24. Inherent powers under Sec. 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the

court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute. Discussion of decided cases.”

9. In view of above settled position of law and after considering the facts as alleged in the FIR and circumstances of the present case, it transpires that continuation of further proceedings pursuant to the said FIR will cause greater hardships to the applicant and no fruitful purpose would be served if such further proceedings are allowed to be continued. The Court must ensure that criminal prosecution is not used as instrument of harassment or for seeking private vendetta or with ulterior motive to pressurise accused or to settle the score.

10. At this stage, a mention is required to be made that the current scenario in the society is that Sections of 498A are being rampantly misused by the complainants and in such cases, all the family members are roped in the complaint only with a view to harass

the family members and the Hon'ble Apex Court has taken cognizance of such incidents in number of judgments.

11. Resultantly, this application is allowed. The F.I.R. registered as C.R.No.I-110 of 2016 with GIDC Vatva Police Station, Ahmedabad city and all consequential proceedings arising therefrom are hereby quashed and set aside qua the applicant no.2. Rule is made absolute. Direct service is permitted. It is open for the prosecution to proceed with the trial against rest of the accused.

SRILATHA

(SANDEEP N. BHATT,J)