

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 12599 of 2022**

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VIJAYBHAI MANSIBHAI KHAVADA (KHARTANI)
Versus
STATE OF GUJARAT

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Appearance:

MR PAWAN A BAROT, ADVOCATE for the Applicant(s) No. 1
for the Respondent(s) No. 2
MS MOXA THAKKAR, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 19/07/2022

ORAL ORDER

1. By way of this Criminal Misc. Application, the applicant, who is accused no.3, has approached this Court under Section 482 of the Code of Criminal Procedure seeking quashment of the FIR being C.R. No.11211045220164 of 2022 lodged on 2nd July 2022 before the Sayla Police Station, District Surendranagar, for the offence punishable under Sections 504 and 506(2) read with Section 114 of the Indian Penal Code.

2. Heard learned advocate Mr.Pawan Barot appearing for the applicant as well as learned APP Ms.Moxa Thakkar appearing for the respondent – State of Gujarat.

3. Mr.Barot submitted that the impugned complaint is nothing but a sheer abuse of process of law and filed only with a *mala fide* intention to see that the relative of the applicant who is facing the charges under Section 302 of the IPC may not get the bail.

4. Mr.Barot further submitted that the relatives of the applicant has filed his bail application before this Court on 30th June 2022, and thereby with a view to create a good defence and/or prejudice to the Court, such a false complaint came to be filed on 2nd July 2022 for the offence alleged to have happened on 4th June 2022. Mr.Barot further submitted that on bare perusal of Sections 504 and 506(2) of the IPC, the ingredients are not attracted. Mr.Barot heavily relied upon the judgment in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others**, reported in *AIR 1992 SC 604*, which squarely covers the issue and thereby the impugned FIR is required to be quashed.

5. By making the above submissions, Mr.Barot, learned advocate appearing for the applicant, has prayed before this Court to allow the present Criminal Misc. Application.

6. Per contra, Ms.Moxa Thakkar, the learned APP appearing on behalf of the respondent – State, has vehemently opposed the present application and contended that the present application under Section 482 of the Code of Criminal Procedure may not be considered as the investigation is at the very threshold and has just begun. She further submitted that the present applicant is alleged to have administered threats to the complainant because there was past enmity between them, more particularly, the husband of the complainant has been murdered by some of the relatives of the present applicant.

7. Ms.Thakkar further submitted that the bare perusal of the FIR would, *prima facie*, constitute the offence and this Court

may not entertain this application under Section 482 of the Code of Criminal Procedure. Ms.Thakkar further submitted that considering the fact that the husband of the complainant was murdered by some of the relatives of the present applicant and thereby not once but twice threats have been administered on previous dates, i.e. on 4th June 2022 and 21st June 2022, and to which, there is an independent witness also called Navghanbhai Somabhai Sambad, who not only identified the applicant but also gave the car number in which the applicant visited at the place of the complainant.

8. Ms.Thakkar further submitted that the ingredients of Section 503 of the Indian Penal Code are very clearly made out. According to Ms.Thakkar, all the ingredients of the definition of criminal intimidation are *prima facie* made out and, thereby this Court may not entertain the present application by invoking the extraordinary jurisdiction conferred under Section 482 of the Code of Criminal Procedure.

9. By making the above submissions, Ms.Thakkar, learned APP appearing for the respondent - State has prayed before this Court to dismiss the present Criminal Misc. Application.

10. I have heard the learned advocates for the respective parties and have gone through the materials on record. No other further submissions have been canvassed by the learned advocate appearing for the respective parties except what is stated herein above.

11. Having considered the submissions of both the sides, at the outset it is required to be noted that prior to the lodgement

of the impugned FIR, there is one another FIR dated 6th December 2021 lodged against some of the relatives of the present applicant for the offence punishable under Section 302 of the Indian Penal Code. In the said incident, the husband of the present complainant has been murdered. It is also pertinent to note that in the said context, the main accused of that offence under Section 302, while in custody, some of the relatives as well as the present applicant had visited the place of the present complainant and administered threats not once but twice on various dates, i.e. 4th June 2022 and 21st June 2022. It is also pertinent to note that even there is an independent witness called Navghanbhai Somabhai Sambad who has not only seen the present applicant at the scene of the incident but also identified the car and the car number in which they visited the place of the complainant.

12. Keeping in mind the above facts, it would be profitable to refer to the celebrated judgments of the Hon'ble Supreme Court, wherein the scope and ambit of Section 482 of the Code of Criminal Procedure is explained. It would be apt to refer and rely upon the decisions of the Hon'ble Supreme Court, wherein the law with regard to quashing of the complaint has been settled.

13. In the case of **M/s. Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra**, reported in *AIR SC 2021 1918*, the Supreme Court has held as under :

“10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress,

the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the

commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

14. In the case of **State of Haryana vs. Bhajan Lal**, reported in 1992 Supp. 1 SCC 335, the Supreme Court has observed as under :

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

15. In the case of **Jagmohan Singh vs. Vimlesh Kumar & Ors.**, rendered in Civil Appeal No.741 of 2022, decided on 5.5.2022 , the Supreme Court observed as under :

“... At this stage, we are not inclined to look into the correctness of the allegations made in the FIR. Ex-facie, the allegations in the FIR disclose an offence. Whether the persons named in the FIR have committed the offence or not, has to be decided upon trial, in the criminal proceedings.

The Court interferes in criminal proceedings, in exercise of the power under Section 482 of the Cr.P.C., in rare and exceptional cases, to give effect to the provisions of the Cr.P.C. or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

While exercising jurisdiction under Section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not. The jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise is justified by the specific provisions of Section 482 of the Cr.P.C. itself.”

16. Keeping in mind the aforesaid legal pronouncements of the Hon'ble Supreme Court, in my considered opinion, the present case does not fall within the four corners of rarest of rare which warrants any interference at the instance of this Court exercising extraordinary jurisdiction conferred under Section 482 of the Code of Criminal Procedure, to quash the complaint at the threshold, more particularly, when there is a past incident of Section 302 connected therewith. At this stage, therefore, this Court would not incline to exercise extraordinary jurisdiction conferred under Section 482 of the Code of Criminal Procedure. Therefore, the present Criminal Misc. Application is devoid of any merits and the same is accordingly dismissed.

(NIRAL R. MEHTA, J.)

/MOINUDDIN