IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 25274 of 2017

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AMANULLAH ABDULVAHID QUARESHI & ORS.

Versus

STATE OF GUJARAT & ANR.

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Appearance:
MR MM TIRMIZI(1117) for the Applicant(s) No. 1,2,3,4,5,6,7
O I PATHAN(7684) for the Respondent(s) No. 2
MR SOHAM JOSHI, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 24/04/2025

ORAL ORDER

Learned advocate for the petitioners does not press present petition qua petitioner No.1. Accordingly, present petition stands disposed of as not pressed qua petitioner No.1.

ORDER QUA PETITIONER NOS.2 TO 7

1. By way of this application under Section 482 of the Code of Criminal Procedure, 1973, the petitioners have prayed to quash and set aside Criminal Case No.1707 of 2012 pending before learned CJM, Dahod and all the consequential proceedings arising therefrom.

2. Seeking quashment of questioned FIR, learned advocate for the petitioners submits that petitioners are in-laws of the complainant. It is further submitted that complainant has made general allegations against the petitioners in typical fashion to enrope petitioners in the offence. It is further submitted that FIR

even if taken on its face value, it could not establish offence of section 498(A) of IPC as well as u/s 3 and 7 of the Dowry Act. Reading questioned FIR, learned advocate for the petitioners submits that right to file FIR has been misused by complainant and it is filed to pressurize the petitioners and therefore, it is submitted to allow the petition.

3. Learned advocate for the complainant opposing plea to quash the FIR would submit that according to FIR, the petitioners were inciting husband of the complainant and it was root cause for offence alleged against the husband. In view of that, it is submitted that let trial to conduct against the petitioners to test veracity of the allegations. On this grounds, it is submitted to dismiss the petition.

4. Learned APP while adopting the arguments of learned advocate for the complainant, prays to dismiss the petition.

5. At the outset, let refer relevant portion of FIR, which reads as under (it is in Gujarati, for better understanding, it is translated in English) :-

> *"My name is Shahin W/o. Amanulla Kureshi, Age 35 Years, Occupation: Household chore, Residing at: Kot Ni Raang, Munda Darwaja, Jamalpur, Ahmedabad City, presently residing at: C/201, Meem Residency, Nr. Emaad, 100 Feet Road, Sarkhej, Ahmedabad City. M.No.7046752492.*
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> *Upon being asked in person, I state that I stay at above-mentioned address with my mother and brothers and do household chore.*

Today, I came here and declare and dictate my complaint that my marriage was solemnized on 07/02/2009 as per customs and rites of Muslim community at Munda Darwaja in Jamalpur with Amanulla Abdulwahid Kureshi and before our marriage, my husband was serving as a Mechanic in some private company in Saudi Arabia and he stated to my maternal family that I will take her with me after my marriage with him. Thereafter, I got married and stayed at my matrimonial house for two and half month with my husband. After around twenty days of our marriage, my husband used to find my mistakes in one way or another and beat me, despite that, I was tolerating the same. He was subjecting me to physical as well as mental torture and two days prior to his departure to Saudi Arabia, his all four sisters who happen to be my real sister-in-laws, including my sister-in-laws (1) Rukaiya @ Mannaben W/o. Bilat and (2) Rukshana @ Upaben (3) Shabana and (4) Afsana, (5) my brother-in-law (Jeth) Abdulajij @ Poni and (6) My brother-in-law (Jeth)'s son Ejaj Ismailbhai, all in collusion with each other, used to taunt me arbitrarily, even after my husband went to Saudi Arabia and they used to tell me that you have brought nothing in Kariyavar (dowry) from your father's house and therefore, you do not deserve our house. Saying so, they used to harass me physically as well as mentally and therefore, I went to my maternal house and thenceforth, my husband has not talked with me even on mobile phone. He returned to Ahmedabad a year later and thereafter, he again went to Saudi Arabia after staying at Ahmedabad for two months. In this manner, he used to come to Ahmedabad frequently. Thereafter, my husband has got married to another woman at Nadiad without my knowledge after four years of our marriage and I do not know her name and address, but I came to know about his second marriage from my real uncle and other relatives residing opposite to my matrimonial home and he lives in Saudi Arabia with his second wife. My husband returned to the above-mentioned address from Saudi Arabia on 29/07/2017 and as I came to know the same from my cousin brother Ahmedbhai, I and my

younger brother Anvarbhai Ataaulla informed my husband through my cousin brother to take me with him, he informed me through my cousin brother that, inform your cousin sister that I do not want to keep her and if she wants divorce from me, she will have to give me Rupees Two Lakhs Fifty Thousand only, which I have spent for second marriage and if she will pay me the said cost, I will give her divorce. As I and my maternal family are unable to give the said cost of marriage to him, I have come here with my brother Anvarbhai to lodge the complaint against my husband and all the said respondents, therefore, it is my complaint to take action against all the said respondents. My witnesses are my brother and whoever found during police investigation."

6. Apt to note that allegations levelled in the FIR are general and vague in nature. In order to establish offence under section 498(A) of IPC, one need to averred that there was harassment or cruelty. Cruelty means conduct likely to commit suicide or cause grave injury or danger to her life, limb or health physically or mentally to the complainant or harassment with a view to coercing her or her relatives to meet unlawful demands for property or valuable security.

7. In the present case, FIR even if taken on its face value, so far as petitioners are concerned, role of the petitioners is found to be limited of inciting husband of the complainant. It is alleged that due to such incitement, husband of the complaint was extending physical and mental cruelty to the complainant. However, specific incidents are missing in the matter. Causal reference of the petitioner in the FIR is insufficient to take cognizance.

8. In the case of **Geeta Mehrotra Versus State Of Uttar Pradesh [2012 (10) SCC 741]**, the Hon'ble Apex Court has held in para 15, 16,17, 20,21 and 25 as under :-

> *"15. Under the facts and circumstance of similar nature in the case of Ramesh V/s. State of Tamil Nadu reported in (2005) SCC (Crl.) 735 at 738 allegations were made in a complaint against the husband, the inlaws, husband's brother and sister who were all the petitioners before the High Court wherein after registration of the F.I.R. and investigation, the charge sheet was filed by the Inspector of Police in the court of Judicial Magistrate III, Trichy. Thereupon, the learned magistrate took cognizance of the offence and issued warrants against the appellants on 13.2.2002. Four of the accused-appellants were arrested and released on bail by the magistrate at Mumbai. The appellants had filed petition under Section 482, Cr.P.C. before the Madras High Court for quashing the proceedings in complaint case on the file of the Judicial Magistrate III, Trichy. The High Court by the impugned order dismissed the petition observing that the grounds raised by the petitioners were all subject matters to be heard by the trial court for better appreciation after conducting full trial as the High Court was of the view that it was only desirable to dismiss the criminal original petition and the same was also dismissed. However, the High Court had directed the Magistrate to dispense with the personal attendance of the appellants.*
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> *16. Aggrieved by the order of the Madras High Court dismissing the petition under Section 482 Cr.P.C., the special leave petition was filed in this Court giving rise to the appeals therein where threefold contentions were raised viz., (i) that the allegations are frivolous and without any basis; (ii) even according to the FIR, no incriminating acts were done within the jurisdiction of Trichy Police Station and the court at Trichy and, therefore, the learned magistrate lacked territorial jurisdiction to take cognizance of the offence and (iii) taking cognizance of the alleged offence at that stage was barred under Section 468(1)*

Cr.P.C. as it was beyond the period of limitation prescribed under Section 468(2) Cr.P.C. Apart from the subsequent two contentions, it was urged that the allegations under the FIR do not make out any offence of which cognizance could be taken.

17. Their Lordships of the Supreme Court in this matter had been pleased to hold that the bald allegations made against the sister in law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge sheet furnished the legal basis for the magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge sheet, none of the alleged offences under Section 498 A, 406 and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister in law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.

20. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao V/s. L.H.V. Prasad & Ors. reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that: "there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement

are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts." The view taken by the judges in this matter was that the courts would not encourage such disputes.

21. In yet another case reported in AIR 2003 SC 1386 in the matter of B.S. Joshi & Ors. V/s. State of Haryana & Anr. it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power.

25. In the case at hand, when the brother and unmarried sister of the principal accused Shyamji Mehrotra approached the High Court for quashing the proceedings against them, inter-alia, on the ground of lack of territorial jurisdiction as also on the ground that no case was made out against them under Sections 498A,/323/504/506 including Sections 3/4 of the Dowry Prohibition Act, it was the legal duty of the High Court to examine whether there were prima facie material against the appellants so that they could be directed to undergo the trial, besides the

question of territorial jurisdiction. The High Court seems to have overlooked all the pleas that were raised and rejected the petition on the solitary ground of territorial jurisdiction giving liberty to the appellants to approach the trial court."

9. In judgment of the Hon'ble Apex Court in case of **Kamal and others Vs. State of Gujarat** and another, rendered in SLP (Cri.) No.9167 of 2024 in apra 13 and 14, the Hon'ble Apex Court held as under:-

"13. Before parting, we would like to observe that the High adopted an extremely pedantic approach while dealing with the quashing petition of the appellants. No doubt, in ordinary course, while exercising power under Section 482 of the CrPC, the Court is not required to test the correctness of the allegations, but in matters arising from matrimonial disputes, particularly where the allegations are levelled after many years of marriage and, that too, after one party initiates divorce proceeding against the other, the Court must be circumspect in taking the allegations at their face value. Rather, it must examine, where allegations of mala fides are there, whether those allegations have been levelled with an oblique purpose. More so, while considering the prayer of the relatives of the husband.

14. In view of the discussion above, in our view, the continuance of the proceedings as against the parents-in-law (second and third appellants) would amount to abuse of the process of the Court and therefore we deem it appropriate to partly allow this appeal and quash the impugned proceedings qua the second and third appellants. Consequently, the judgment and order of the High Court dismissing the Section 482 petition qua the second and third appellants is set aside. The impugned FIR and the consequential proceedings qua the second and third appellants stand quashed. The proceedings against the first appellant shall continue and brought to its logical conclusion in accordance with law."

9.1 In recent judgment in case of Muppidi Lakshmi Narayana Reddy & Ors. Vs. The State Of Andhra Pradesh & Anr. Rendered in 2025 JX(SC) 558, the Hon'ble Apex Court held as under:-

> *"11. In the present case also, it is an admitted position that the appellants are residing at Hyderabad whereas the de-facto complainant stayed in her marital house at Guntur at the relevant point of time. She is presently staying in USA. There is omnibus allegation against the appellants that they too used to demand dowry or instigate accused nos. 1 to 3 who are not before us, in demanding dowry.*
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> *12. Considering the entire facts of the case, we are of the view, having relied on this Court's previous decisions in Geeta Mehrotra (supra) & Dara Lakshmi Narayana (supra), the present criminal case against the appellants deserves to be quashed. Accordingly, the appeal is allowed and Criminal Case No. 359 of 2016 against the appellants is quashed."*

10. Coming back to the present case, except bald allegations against the petitioners, who are in-laws of the complainant, no specific incident or overtact is alleged against the petitioners. FIR is found to be abuse of process of law against the petitioners and allowing the petitioner to face trial would be absurd process.

11. In the result, the application is allowed. The proceedings of Criminal Case No.1707 of 2012 pending before learned CJM, Dahod and all the consequential proceedings arising therefrom are hereby quashed and set aside qua the petitioners herein. Direct service is permitted.

(J. C. DOSHI,J)

SHEKHAR P. BARVE

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHEKHAR PRAFULBHAI BARVE(HC00200), Principal Pvt. Secretary, at High Court of Gujarat on 25/04/2025 16:41:53