

Gujarat High Court

Babubhai Sadabhai Rathod vs State Of Gujarat on 19 April, 2023

Bench: Ilesh J. Vora

R/CR.MA/14756/2013

ORDER DATED: 19/04/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 14756 of 2013

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BABUBHAI SADABHAI RATHOD & 3 other(s)

Versus

STATE OF GUJARAT & 1 other(s)

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Appearance:

MR PRATIK B BAROT(3711) for the Applicant(s) No. 1,2,3,4

HCLS COMMITTEE(4998) for the Respondent(s) No. 2

MADANSINGH O BAROD(3128) for the Respondent(s) No. 2

MR PRANAV TRIVEDI, ADDL.PUBLIC PROSECUTOR for the Respondent(s)

No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 19/04/2023

ORAL ORDER

1. By way of this application filed under Section 482 of Cr.P.C., the applicants, seek to invoke inherent powers of this Court, praying for quashment of First Information Report being CR.No.I-120 of 2013 registered with Chhani police station, Vadodara for the offences punishable under Sections 498A, 323, 506(2), 294(A) and 114 of the Indian Penal and under sections 3 and 7 of the Dowry Prohibition Act.

2. The facts and circumstances giving rise to filing of the present application are that respondent no.2 - Ranjanben Muljibhai Maganbhai Parmar, was married to Anilkumar Sadabhai Rathod on 21.01.2007. This is a second marriage of respondent No.2. Applicants No.1 to 3 are R/CR.MA/14756/2013 ORDER DATED: 19/04/2023 elder brother-in-law, whereas applicant No.4 is husband of sister-in-law. It is alleged that respondent No.2 wife was subjected to harassment and cruelty by husband and in-laws. It is alleged that after some time of the marriage, the husband was harassing her on the issue of day to day household works and was being beaten up by husband without any fault on her part. It is further alleged that after delivery of a girl child, the husband was not happy and again harassment and cruelty was meted out on her on such pretext. It is alleged that the husband used to ask to bring Rs. 2 lakhs from the father of respondent No.2. It is alleged in the First Information Report that due to constant physical and mental harassment by husband, she had left the matrimonial home. So far as allegations levelled against the applicants are concerned, it is

alleged that the in-laws used to instigate the husband and as a result, she was subjected to cruelty and harassment. In the aforesaid facts, respondent No.2 lodged an FIR for the offences as referred to hereinabove against the husband and present applicants.

3. This Court has heard learned counsel Mr. Pratik Barot, Mr. D.O. Barod and Mr. Pranav Trivedi, learned APP for the respective parties.

4. Mr. Pratik Barot, learned counsel appearing for and on R/CR.MA/14756/2013 ORDER DATED: 19/04/2023 behalf of the applicants submit that this is a classic example of misuse of process of law, as by making exaggerated version of the concocted incident, without specific instances of harassment, the entire family members have been impleaded as accused in the questioned FIR. It is alleged against the applicants that they have abetted in the alleged act of cruelty and harassment committed by the accused husband. There is specific allegation made against the applicants that in what manner, they have instigated the husband to commit the offence of cruelty. The applicants being elder brother- in-laws of the respondent are living separately at Ahmedabad, whereas applicant No.4 is also living at the address mentioned in the cause title of the petition. Therefore, the applicants have been falsely implicated in the case with an ulterior motive and to pressurize them to settle the matrimonial dispute.

5. In the aforesaid contention, learned counsel Mr. Barot would submit that the criminal proceedings are not used as a weapon of harassment and, therefore, to prevent the abuse of process of law, this is a fit case to exercise inherent powers to quash the questioned First Information Report and consequential proceedings arising therefrom.

6. On the other hand Mr. M.O. Barod and Mr. Pranav R/CR.MA/14756/2013 ORDER DATED: 19/04/2023 Trivedi, learned Additional Public Prosecutor vehemently opposed the plea of quashing of the FIR and contended that looking to the allegations levelled in the FIR against the applicants, at this stage, it cannot be said that prima facie, no offence is made out against the applicants. All the submissions made at the Bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court in the proceedings under section 482 of the Code of Criminal Procedure.

7. The scope and power of the High Court to quash the FIR is well settled. The power under Section 482 of the Code has to be exercised sparingly and cautiously to prevent the abuse of process of Court and to secure the ends of justice. The High Court should refrain from giving a prima facie decision, unless there are compelling circumstances to do so. Taking the allegations, as they are, without adding or subtracting anything, if no offence is made out, only then, the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 of the Cr.P.C.

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 R/CR.MA/14756/2013 ORDER DATED: 19/04/2023 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 R/CR.MA/14756/2013 ORDER DATED: 19/04/2023 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 *Kahkashan 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 analysing 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 R/CR.MA/14756/2013 ORDER DATED: 19/04/2023 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. Heard at length learned counsel for the applicant and learned State counsel. Perused the material placed on record.

13. Having regard to the facts and circumstances of present case, the issue arise for determination is whether the applicants have made out a case for quashing of FIR?

14. I have carefully considered the allegations made in the FIR. So far as the applicants are concerned, they are brother-in-law and husband of sister-in-law of respondent No.2. The husband is not before this Court. Upon careful reading of the FIR, it appears that serious allegations are made against the husband only. No specific allegations of R/CR.MA/14756/2013 ORDER DATED: 19/04/2023 harassment have been alleged against the applicants. How and under what manner the applicants have abetted the husband in the commission of the act of cruelty having also not specifically disclosed in the FIR. Prima facie, it appears that bald allegations are made against the applicants by the complainant appeared to suggest her mindset to rope in as many of the husband's relatives as possible. It is not in dispute that the applicants are living separately at Ahmedabad and at no point of time lived together along with respondent No.2. Therefore, this Court is of the opinion that this is a clear case of over implication of the applicants in the alleged FIR.

15. For the foregoing reasons, the accusations made against the applicants do not constitute any offence. The case in hand is fully covered by categories (1), (3) and (7) as enumerated by the Apex Court in the case of Bhajan Lal(supra). Therefore, in order to prevent the misuse of process of law and Court, this is a fit case to exercise inherent powers of this Court to quash the FIR and consequential proceedings arising therefrom.

16. In the circumstances, the application is allowed. First Information Report being CR.No.I-120 of 2013 registered with Chhani police station, Vadodara is quashed and set aside qua the applicants. All consequential proceedings R/CR.MA/14756/2013 ORDER DATED: 19/04/2023 arising therefrom are also quashed and set aside qua the applicants.

17. Application stands disposed of. Rule is made absolute accordingly.

(ILESH J. VORA,J) SUDHIR