

Gujarat High Court

Mayur Chetanbhai Shah vs State Of Gujarat on 2 July, 2021

Bench: Gita Gopi

R/CR.MA/1899/2019

JUDGMENT DATED: 02/07/2021

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 1899 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

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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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MAYUR CHETANBHAI SHAH
Versus
STATE OF GUJARAT

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Appearance:

MRS NISHA M PARIKH(2397) for the Applicant(s) No. 1,2,3

MR SL VAISHYA(960) for the Respondent(s) No. 2

MS MONALI BHATT, APP (2) for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 02/07/2021

ORAL JUDGMENT

1. Rule returnable forthwith. Ms.Monali Bhatt, learned APP waives service of notice of rule on behalf of the respondent State and Mr.S.L.Vaishya, learned advocate waives service of notice of rule on behalf of respondent No.2.

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2. The present application is filed under section 482 of the Code of Criminal Procedure, 1973 ("the Code" for short) with a prayer to quash the FIR being CR No.I - 63 of 2018 dated 3.11.2018 lodged with East Mahila Police Station, Ahmedabad City for the offence punishable under sections 498-A, 323, 294(b) and 114 of Indian Penal Code and sections 3 and 7 of the Dowry Prohibition Act 1961.

3. It is stated by the applicants that FIR has been lodged by the complainant for oblique and ulterior motive and that the same is in sheer abuse of the process of law and Court and therefore, it is required to be quashed.

4. Ms.Nisha Parikh, learned advocate for the applicants has submitted that applicant No.1 and respondent No.2 are husband and wife and their marriage had solemnized in the year 2015 and out of the said wedlock, they have a daughter. She further submitted that after marriage, respondent No.2 along with her husband was residing with inlaws who are applicant Nos.2 and 3. There was quarrel between applicant No.1 - husband and respondent No.2 - wife and thereafter, both of them started living separately. Apart from the said facts, Ms.Parikh submitted that false allegation of demand of Rs.50,000/- as dowry is made. In fact, no such demand was made by any of the applicants. She further submitted that after husband and wife started staying separately, it was the husband who had consumed poison and father-in-law of respondent No.2 i.e. applicant No.3 herein had taken the husband to Vinus Hospital. Ms.Parikh further R/CR.MA/1899/2019 JUDGMENT DATED: 02/07/2021 submitted that as applicant Nos.2 and 3 apprehended unusual action from the side of their daughter-in-law so they had severe relationship and as a counter blast, the present FIR has been filed. She further submitted that there is no physical or mental torture from any of the applicants to the complainant. The allegations in the FIR are general and vague and no ingredients of section 498- A of IPC or of the Dowry Prohibition Act are satisfied in the matter nor the FIR discloses guilty approach under section 323 or section 294(b) of IPC of any of the applicants.

5. Mr.S.L.Vaishya, learned advocate for respondent No.2 - complainant has submitted that at present, the complainant is staying alone and she is required to be protected.

6. Ms.Monali Bhatt, learned APP appearing for the respondent State has submitted that it is only during trial the issue can be decided whether alleged act as stated in the complaint would attract ingredients of sections invoked in the said FIR. She submitted that cruelty as explained in section 498-A of IPC would mean any wilful conduct which is of such a nature by the husband and relatives of the husband so as to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. Ms.Bhatt further submitted that allegation of physical beating is against the husband and allegation of demand of dowry is against all the applicants and thus, such act form offence as defined in section 498-A of IPC. Harassment to the woman with a view to cause her to R/CR.MA/1899/2019 JUDGMENT DATED: 02/07/2021 meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand would constitute "cruelty" and hence, the prayer made in the petition for quashing of the FIR is required to be rejected.

7. In the case of Rashmi Chopra Vs State of Uttar Pradesh and another, reported in (2019) 15 SCC 357 wherein the Apex Court while dealing with the allegation of dowry demand and harassment to the girl preferred to quash the criminal proceedings considering it as abuse of the process of law and it was held that allegations under section 498-A of IPC and Dowry Prohibition Act were made only to harass and put pressure on the husband and his relatives. In the said matter of Rashmi Chopra (supra), general allegation was "they started harassing the daughter of applicant demanding additional dowry of rupees one crore". In the referred case too, it was found that the husband and wife started living separately, so, was observed that had there been any dowry demand or harassment, the girl would have given complaint to police or any other authority and therefore, the FIR came to be quashed considering the matter to be covered by Category (7) as enumerated in Bhajan Lal Vs State of Haryana, reported in 1992 SCC (Cri.) 426.

8. Here, in this case too, as per the complaint, respondent No.2 has been living with applicant No.1 in joint family and after the wedlock, couple have daughter. The husband is alleged to be unemployed and because of R/CR.MA/1899/2019 JUDGMENT DATED: 02/07/2021 that, there were frictions in the family. Thereafter, as per the complainant six months prior to the complaint, she, her husband and daughter had come to her mother's place at Ahmedabad where it is alleged that the husband had demanded Rs.50,000/- and on the next day, it is stated that the husband had consumed poison and thereafter went away to Surat. After a month, there was a compromise and it is alleged by the complainant that husband thereafter again started harassing her, the inlaws were taking side of the husband and they too have demanded money to the extent of Rs.50,000/-. It is stated that since last five months, the complainant along with her husband and daughter are staying separately at G-1, Shreeji Apartment, L.G.Lane, Near Hanuman Temple, Katargam, Surat.

9. As per the FIR, the complainant and her daughter were staying separately with her husband and on 5.9.2018, the husband came home and started beating her and thereafter, the husband consumed poison, her father in law took the husband to Vinus Hospital, she informed her mother about the incident who came down to Surat and as alleged, inlaws had not allowed her and her mother to visit her husband. It is stated that the mother of the complainant stayed for three days at Surat and thereafter, in-laws told her mother that they do not want to meet their daughter-in-law and therefore, on 10.9.2018, she came down to Ahmedabad from Surat and thereafter, since then, the complainant is staying with her mother. According to her, till the filing of the complaint, the applicants have not come to take her back.

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10. The allegations in the FIR show that the complainant was staying separately with her husband. The document in the file at Annexure-B to the petition shows that on 6.9.2018, applicant No.1 was admitted in Vinus Hospital. It was diagnosed of poisoning. The observation in the discharge summary is also of emergency consultation in case of suicidal thought. The FIR appears to have been filed as the complainant stated that she has not been called back by the applicants and that she was staying separately with her husband. It was during their separate stay as stated in the FIR that on 5.9.2018, the husband consumed poison and the FIR is lodged with delay on 3.11.2018. At the relevant time, when as alleged dowry demand was made, no criminal complaint has been filed. The

incident has occurred in Surat and the FIR has been lodged at East Mahila Police Station, Ahmedabad City. Here, in this case, it is the husband who had tried to commit suicide and allegations regarding dowry demand appears to be general in nature. At the relevant time, no such criminal complaint has been filed at Surat. The FIR appears to be with an intent to put pressure on the applicants. Such bald statement does not attract offence to come within the definition of "cruelty" as explained in section 498-A of IPC. Further, there is no prima facie evidence to show physical cruelty to put the case under section 323 of IPC.

11. A three Judge Bench of the Apex Court in State of Karnataka Vs L.Muniswamy, reported in (1977) 2 SCC 699 held that the High Court is entitled to quash a R/CR.MA/1899/2019 JUDGMENT DATED: 02/07/2021 proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. In paragraph 7 of the judgment, it has been observed as under.

"7....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its R/CR.MA/1899/2019 JUDGMENT DATED: 02/07/2021 subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

12. The judgment of the Apex Court in the case of Bhajan Lal (supra) has elaborately considered the scope and ambit of section 482 of the Code. In paragraph 102, the Apex Court has enumerated 7 categories of cases where power can be exercised under section 482 of the Code. Much celebrated paragraph 102 is extracted herein below.

"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:

R/CR.MA/1899/2019 JUDGMENT DATED: 02/07/2021 (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.

R/CR.MA/1899/2019 JUDGMENT DATED: 02/07/2021 (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."

13. In view of the discussion made hereinabove, the facts of the present matter would not attract the ingredients of sections invoked in the FIR. Therefore, this Court is of the considered opinion that lodging of the FIR is R/CR.MA/1899/2019 JUDGMENT DATED: 02/07/2021 sheer abuse of the process of law and Court and it is with mala fide intention, with ulterior motive and to wreck vengeance with the accused and to spite them due to private and personal grudge. This Court is of the considered view that the present case is squarely covered by the category 7 as enumerated in the decision in the case of Bhajan Lal (supra).

14. In the result, the present application succeeds and the same is allowed. FIR being CR No.I-63 of 2018 lodged with East Mahila Police Station, Ahmedabad City for the offence under sections 498A, 323, 294(b), 114 of IPC and sections 3 and 7 of the Dowry Prohibition Act 1961 and consequential

proceedings arising therefrom are ordered to be quashed.

(GITA GOPI,J) H.M. PATHAN