

(2023) 03 GUJ CK 0103
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 13748 Of 2017

Dhanjibhai Ramabhai Vankar & 2 Other(S)	APPELLANT
Vs	
State Of Gujarat & 1 Other(S)	RESPONDENT

Date of Decision : 21-03-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 114, 306, 498(A), 506(2)

Citation : (2023) 03 GUJ CK 0103

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Vaibhav N Sheth, Vishal N Pandit, P P Majmudar, Maithili Mehta

Final Decision : Dismissed

Judgement

Ilesh J. Vora, J

1. Rule forthwith. Respondents waive service.
2. By way of this application under Section 482 of the Code of Criminal Procedure, 1973, the applicants-original accused seek to invoke inherent powers of this Court, for quashing of the FIR being I-C.R.No.46 of 2017 registered with Modasa Rural Police Station, Amreli for the offences punishable under Sections 506(2),306 and 114 of the Indian Penal Code.
3. Facts and circumstances giving rise to file present petition are that deceased was subjected to mental and physical harassment by the applicants, as a result of which, she committed suicide by consuming poisonous substance. Pursuant to the FIR filed by the complainant, the applicants have been chargesheeted for the offence as referred above.
4. The original informant filed an affidavit, which is taken on record. She has categorically stated that the dispute with the applicants has been amicably settled with the intervention of the friends and well-wishers and pursuant to the

settlement, she does not wish to prosecute the accused and has no objection if the proceedings are quashed.

5. Learned advocates for the respective parties have jointly submitted that:-

(1) In view of the compromise between the parties and when same has not been secured through coercion, threat or inducement, no prima facie case is made out against the applicants for the alleged offence and therefore, no useful purpose would be served by continuing the proceedings as there is no possibility of the accused being convicted for the alleged offence and it would be unnecessary harassment and futile attempt, if the prosecution is allowed to continue.

(2) On merits, it is submitted that the allegations leveled in the FIR are accepted on its face value, it does not make out the case for commission of the alleged offence of suicide. Relying on the case of Chitresh Kumar Chopra Vs. State of NCT of Delhi (2009 (16) SCC 605), to submit that in order to convict a person under Section 306 of IPC, there has to be a clear mens rea to commit an offence and it also requires an active or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide. Merely on allegations of harassment without their being any positive action, proximate to the time of occurrence, on the part of the accused, which led or compel the deceased to commit suicide, the charge in term of Section 306 of the IPC is not sustainable.

(3) The allegations against the applicants, so far act of cruelty is concerned, are extremely general in nature and no specific role being assigned to them and therefore, the allegations are not sufficient to attract the provisions of Section 498A of the IPC and Dowry Prohibition Act.

6. On the other hand, learned APP has relied upon the judgment of the Apex Court in case of Daxaben Vs. State of Gujarat, AIR 2022 SC 3530, to contend that even settlement has taken place, the court lacked the jurisdiction to quash the FIR registered under Section 306 of the IPC, as the offence under Section 306 falls in the category of heinous and serious offence and are to be treated as crime against the society and not against individual one. On merits of the case, it is submitted that this is not a stage where minute and meticulous exercise with regard to the appreciation of evidence may be done and fruitfulness of the allegations could only be tested in a trial and therefore, when prima facie case is made out, the application is liable to be dismissed.

7. Having considered the contentions raised by learned counsel for the respective parties, the issue arise is whether the FIR and consequential proceedings are liable to be quashed in exercise of extraordinary and inherent jurisdiction?

8. It is no doubt to true that pursuant to the compromise arrived at between the parties, the original informant – respondent no.2 has no objection if the proceedings are quashed. On perusal of the settlement affidavit, it appears that

the settlement is voluntary, without monetary benefit to be given to the complainant. In the case of Daxaben (supra), in Para-50 of the judgment, the Apex Court clearly laid down that offence under Section 306 of the IPC would be fall in the category of heinous and serious offences and are to be treated as crime against the society and FIR under Section 306 cannot be quashed on the basis of financial settlement with the informant, surviving spouse, parents, children, guardians or anyone else. It needs to be noted that the Apex Court has not examined the question whether the FIR discloses offence under Section 306 of the IPC.

9. In light of the observations made by the Apex Court in the case of Daxaben (supra), this Court decides the case on its own merits.

10. The applicants are charged with Section 306 of the IPC. Section 306 provides that whoever abates the commission of suicide, shall be punished with the imprisonment and shall be also liable to be fine. The essential ingredients of offence under Section 306 of the IPC are (i) abatement, (ii) intention of the accused to aid or instigate or abate the deceased to commit suicide. Mere harassment by itself would not constitute the abatement of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. In other words, there must be a prove of direct or indirect act(s) of incitement to the commission of the suicide and therefore, whether a person has abated to commit a suicide or not could only be gathered from the facts and circumstances of each case.

11. In the facts of the present case, more particularly, considering the fact of settlement and chargesheet case papers, prima facie no case is made out against the accused for the alleged offence under Section 306 of the Indian Penal Code.

12. It is no more res-intergra that inherent powers could be exercised by the High Court to give effect to an order under Cr.P.C.; to prevent of abuse of process of Court; and to otherwise secure ends of justice. Thus, considering the peculiar facts and circumstances of present case, this Court is of the considered opinion that there is minimal chances of witnesses coming forward in support of the prosecution and chances of conviction appears to be remote and/or bleak. In such circumstances, it would be unnecessary harassment and futile attempt if the prosecution is allowed to continue. Cross FIR filed under Section 498(A) of the IPC has been quashed by this Court.

13. For the foregoing reasons, this Court is of the considered view that the application deserves to be allowed. Accordingly, following the guidelines in State of Haryana & others Vs. Bhajanlal & others (1992 Suppl. 1 SCC 335), the application is allowed. The FIR -C.R.No.46 of 2017 registered with Modasa Rural Police Station, Amreli and all other proceedings arising therefrom are quashed. Rule is made absolute accordingly.