

(2017) 02 GUJ CK 0183
In the Gujarat High Court
Case No : 11014 of 2015

JAGDISHPRASAD RAMSHWRUPPRASAD GUPTA & 4

APPELLANT

Vs

STATE OF GUJARAT & 1

RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 114](#),
[Section 498A](#), [Section 323](#), [Section 504](#) - Abettor present when offence is committed -
Husband or relative of husband of a woman subjecting her to cruelty - Punishment for
voluntarily causing hurt - Intentional insult with intent to provoke breach of the peace

Citation : (2017) 02 GUJ CK 0183

Hon'ble Judges : J B Pardiwala

Bench : Single Bench

Advocate : Hardik A Dave, Mona Bhatt, P V Patadiya

Final Decision : Allowed

Judgement

1. RULE returnable forthwith. Ms.Bhatt, the learned APP waives service of notice of rule for and on behalf of the respondent no.1 - State of Gujarat. Mr.Patadiya, the learned counsel appointed by the High Court Legal Services Authority, waives service of notice of rule for and on behalf of the respondent no.2 - original first informant.

2. By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicants - original accused nos.2 to 6 seek to invoke the inherent powers of this Court, praying for quashing of the FIR being CR-I No.32 of 2015 registered with the Dindoli Police Station, Surat, for the offence punishable under Sections 498A, 323, 504 read with Section 114 of the Indian Penal Code.

3. As usual, the entire family of the husband has been implicated in the alleged offence. The applicant no.1 is the father-in-law, the applicant no.2 is the mother-in-law, the applicant no.3 is the brother-in-law, the applicant no.4 is the sister-in-

law and the applicant no.5 is another brother-in-law of the respondent no.2 - original first informant.

4. It is alleged in the FIR that the first informant got married on 27th November 2009 with one Chandan Jagdishprasad Gupta. Initially, the marital life was quite happy but thereafter the husband, upon instigation at the end of the applicants herein, started demanding an amount of Rs.4 lac from the parents of the first informant. The allegations against the applicants herein are that of abetting the acts of cruelty alleged to have been committed by the husband.

5. It appears that the FIR is dated 25th April 2015 for something which happened on 2nd August 2012. It also appears that in 2013, there was a settlement between the parties. The wife of the husband once again started residing together, but as alleged, within two months thereafter the husband again at the instigation of the applicants herein started demanding Rs.4 lac.

6. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is, whether the FIR should be quashed so far as the applicants herein are concerned.

7. On 11th June 2015, the following order was passed by a coordinate bench :
"Heard Mr.Hardik A. Dave, learned advocate for the applicants.

It is submitted that applicants Nos.1 and 2 are the father-in-law and mother-in-law of respondent No.2, whereas applicant No.3 is the younger brother of the husband of respondent No.2 and respondent No.4 is the sister of the husband of respondent No.2. Applicant No.5 is the husband of applicant No.4. Applicant No.4 is married and is staying with applicant No.5, her husband, in Bihar.

It is further submitted that the allegations under Section-498A of the Indian Penal Code are levelled against the husband of respondent No.2 who is not a party to the petition. The allegations against the present applicants are of a vague and general nature. The dispute between respondent No.2 and her husband was settled previously in the Court, as is clear from a reading of the FIR. After the settlement, respondent No.2 was staying separately with her husband and the applicants were not staying with her. The allegations levelled by respondent No.2 are vague and do not implicate the applicants in any manner so as to make out a case under Section 498A of the Indian Penal Code against them.

Learned advocate for the applicants has placed reliance upon a judgment of the Supreme Court in Bhaskar Lal Sharma and another Vs. Monica, reported in 2010 (2) GLH 640. Another judgment relied upon on behalf of the applicants is in the case of Neelu Chopra Vs. Bharti, reported in 2009 (10) SCC 184.

Issue Notice returnable on 06.07.2015. Ms.Chetna M. Shah, learned Additional Public Prosecutor waives service of notice for respondent No.1.

No coercive action be taken against the applicants, till then.

In addition to the normal mode of service, Direct Service for respondent No.2, is also permitted."

8. I have no hesitation in stating that the allegations levelled in the FIR against the applicants are quite vague and general. In my view, they do not constitute an offence of cruelty within the meaning of Section 498A of the Indian Penal Code.

9. The law in this regard has been explained by this Court in details in the case of *Dipak v. State of Gujarat* (Criminal Misc. Application No.5819 of 2009, decided on 26th September 2014). I may quote the observations made therein as under : "16. It is now well settled that the power under Section 482 of the Code has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Code does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

17. The investigation of an offence is the field exclusively reserved for the Police Officers, whose powers in that field are unfettered, so long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII of the Code. While exercising powers under Section 482 of the Code, the Court does not function as a Court of appeal or revision. As noted above, the inherent jurisdiction under the Section, although wide, yet should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

18. In *R.P. Kapur v. State of Punjab* (AIR 1960 SC 866) the apex Court summarized some categories of cases where inherent power can, and should be exercised to quash the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

19. The Supreme Court, in the case of State of A.P. Vs. Vangaveeti Nagaiah, reported in AIR 2009 SC 2646, interpreted clause (iii) referred to above, observing thus:

"6. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp. (1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows: "(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 F.I.R. 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 F.I.R. 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 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.

20. Bearing the aforesaid principles in mind, I need to consider whether the FIR deserves to be quashed so far as the applicants Nos. 2 to 6 are concerned. I have already set out the relations of the petitioners Nos. 2 to 6 with the petitioner No.1 i.e. the husband of the respondent No.2, the complainant.

21. A plain reading of the FIR and the charge-sheet papers reveal that the allegations levelled by the respondent No.2 are quite vague, general and sweeping, specifying no instances of criminal conduct. Although the respondent No.2 is much more annoyed with her husband, with an obvious motive, has arrayed all the close relatives of her husband in the FIR. The Police also seems to have recorded stereo-type statements of the witnesses who are none other than the parents and other relatives of the respondent No.2 and has filed a chargesheet. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of process of the Court. The Court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out prima-facie whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge. To prevent abuse of process of the Court, and to save the innocent from false prosecutions at the hands of unscrupulous litigants, the criminal proceedings, even if they are at the stage of framing of the charge, if they appear to be frivolous and false, should be quashed at the threshold.

22. In Preeti Gupta Vs. State of Jharkhand, reported in 2010 Criminal Law Journal 4303(1), the Supreme Court observed the following:-

"28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country

including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

29. The courts are receiving a large number of cases emanating from section 498-A of the Indian Penal Code which reads as under :

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.- For the purposes of this section, "cruelty" means :

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to 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."

30. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate

relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious re-look of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society."

23. In the aforesaid context, it will also be profitable to quote a very recent pronouncement of the Supreme Court in the case of Arnesh Kumar Vs. State of Bihar, Criminal Appeal No. 1277 of 2014, decided on 2nd July, 2014. In the said case, the petitioner, apprehending arrest in a case under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961, prayed for anticipatory bail before the Supreme Court, having failed to obtain the same from the High Court. In that context, the observations made by the Supreme Court in paras 6, 7 and 8 are worth taking note of. They are reproduced below:-

"6. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride

amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. Crime in India 2012 Statistics published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal. 7. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

8. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament

had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short Cr.PC), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994."

10. For the foregoing reasons, this application is allowed. The First Information Report being I-CR No.32 of 2015 registered with the Dindoli Police Station, Surat, is hereby ordered to be quashed so far as the applicants herein are concerned. All consequential proceedings pursuant thereto, if any, stand terminated. Rule made absolute. Direct service is permitted.