

(2023) 07 GUJ CK 0049

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 11831 Of 2021

Pravinsinh Harisinh Chavda

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 228, 482
Indian Penal Code, 1860 — Section 107, 114, 306, 498A

Citation : (2023) 07 GUJ CK 0049

Hon'ble Judges : Sandeep N. Bhatt, J

Bench : Single Bench

Advocate : Tejas M Barot, H M Shah, Soaham Joshi

Final Decision : Dismissed

Judgement

Sandeep N. Bhatt, J

1. By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant-original accused seeks to invoke the inherent powers of this Court praying for quashing of the F.I.R. being C.R.No.11206038210259 of 2021 filed before the Laghnaj Police Station, District-Mehsana, for the offence punishable under Sections-306, 498A and 114 of the I.P.C.

2. Brief facts of the present case are as under:-

2.1 That the deceased and Jaydeepsinh married in the year 2009. Their married life was more than 12 years and from the wedlock, a son viz.Jayveersinh was born, who is 04 years old. The deceased viz.Kinjalba aged 30 years was residing together with her in-laws. It is alleged that after 05 years of the marriage, no child was born and therefore, the accused subjected the deceased to mental and physical harassment due to which the deceased would come back to her parental home and after counseling, she was sent back to her matrimonial home by the informant and others. Thereafter, a son viz.Kanji was born. It is further alleged

that 12 months before the alleged incident, the deceased told the first informant that the accused has sold away ornaments given to her and whenever she demanded the same, she was mentally and physically harassed. That on 18.04.2021, the deceased committed suicide by hanging. Therefore, the father of the deceased has filed the FIR against the applicant.

3. Rule returnable forthwith. Mr. Soaham Joshi, the learned APP waives service of notice of rule for and on behalf of the respondent No.1- State of Gujarat. Mr. H.M. Shah, the learned advocate waives service of notice of rule for and on behalf of the respondent No.2- original first informant.

4. Heard learned advocates for the parties.

5. Mr. Tejas Barot, learned advocate for the applicants has submitted that the present complaint is filed, which amounts to abuse of process of law as no ingredients under Section-498A or Section-306 of IPC are made out. He has further submitted that on bare reading of the FIR, no prima-facie case is made out against the present applicants as there is no proximity of the incident occurred by way of commission of suicide by the deceased and the alleged incident of such alleged mental harassment as well as physical harassment was occurred prior to 12 months before such incident of suicide has taken place. He has further submitted that no suicide note is found at the place of incident or thereafter. He has further submitted that regarding allegation made under Section-498A is concerned, no material is available on bare reading of the FIR, to believe that the offence constituted under Section-498A of the IPC. He has further submitted that in the FIR, general allegations is made against the present applicants and also considering the other papers of chargesheet, no believable material available on the record by which it can be said that offence under Section- 498A is made out against the present applicants. Therefore, in view of settled position of law, the present application is required to be allowed as neither offence under Section – 306 nor 498A is made out.

6. In support of his submission, he has relied upon the judgment of Hon'ble Supreme Court in the case of Vajinath Khandke Vs. State of Maharashtra & Another reported in (2018) 7 SCC 781 more particularly, paragraph-5 & 7. He has also relied upon the judgment of Hon'ble Supreme Court in the case of Arnab Manoranjan Goswami Vs. State of Maharashtra & Others reported in (2021) 2 SCC 427 and submitted that the Court has ample powers under Section -482 of Cr.P.C. read with Article 226 of the Constitution of India. He has further relied on judgment of Hon'ble Supreme Court in the case of Ude Singh & Others Vs. State of Haryana reported in (2019) 17 SCC 301 and submitted that the ingredients of Section -306 of IPC is explained in this judgment more particularly, the word "abetment" and "instigation". Therefore, considering this judgment, no offence is made out against the present applicants. He has more particularly relied on paragraph 15 and 16 of this judgment. He has further drawn my attention towards judgment of Hon'ble Supreme Court in the case of M. Mohan Vs. State represented by the Deputy Superintendent of Police reported in (2011) 3 SCC

626, which pertains to quashment of proceedings under section-482 as well as explanation of section 306 and 107 of IPC regarding abetment of suicide. He has further submitted by relying on the judgment in the case of Shabbir Hussain Vs. State of Madhya Pradesh & Ors. reported in 2021 SCC OnLine 743. He has relied on paragraphs-4, 5, 6 and 7 of that judgment and submitted that in view of the above judgment, in the present case also, no offence is made out. He has further relied upon the judgment of Hon'ble Supreme Court in the case of Mariano Anto Bruno & Another Vs. Inspector of Police reported in 2022 SCC OnLine SC 1387, more particularly, he relied on the paragraph-40 & 41 of that judgment. He has also relied upon the judgment of Hon'ble Supreme Court in the case of Mangat Ram Vs. State of Haryana reported in (2014) 12 SCC 595, whereby, the Hon'ble Supreme Court explained the scope of Section-306 and 498A of IPC. Lastly, he relied upon the judgment of Division Bench of this Court in the case of State of Gujarat Vs. Raval Deepkkumar Shankerchand & others; Criminal Appeal No.1125 of 1995; decided on 21.03.2022 and submitted that in view of this judgment also, no offence is made out in the present case. Therefore, he prays to exercise the power under Section 482 of Cr.P.C. and quash the proceedings pursuant to the FIR.

7. Per contra, learned APP has strongly objected the contention raised at the bar by the learned advocate Mr. Tejas Barot by submitting that though on bare reading of the FIR, it transpires that the deceased has committed suicide due to some mental as well as physical harassment received from the applicant. He has further submitted that the father of the deceased who is residing at his own house, has given complaint whereby, he has stated that the marriage was solemnized in the year 2009 and as she has not conceived for about 05 years of married life, the family members of her matrimonial house including the father-in-law and mother-in-law has given mental and physical torture. Thereafter, she conceived and has given a birth of one son viz. Kanji. Thereafter, she was staying at her matrimonial home and before 12 months back, the husband as well as father-in-law and mother-in-law have sold out the golden ornaments, which were given by the father of the deceased at the time of marriage. Therefore, the deceased has objected and due to that they have given mental as well as physical torture to the deceased and thereafter, during the visit to the parental house, the deceased – daughter of complainant had informed to the complainant about such incident and torture. Therefore, looking to the continuous act of harassment, it cannot be said that no offence is made out against the present applicant and more particularly, the applicant is before this Court at the state of investigation. He further submitted that when prima-facie case is made out, the Court should not exercise the power under Section 482 of Cr.P.C. Learned APP further submitted that prima-facie, ingredients under Section- 498A as well as Section-306 of IPC is satisfied in the facts of the present case and therefore, he has submitted that the judgments, which are cited by the present applicants are on the different set of facts and circumstances and are not applicable to the present case.

8. Learned APP has drawn my attention towards the judgment of Hon'ble Supreme Court in the case of Mahendra K.C. Vs. State of Karnataka reported in (2022) 2 SCC 129, whereby, the Court has also examined the Section -306 read with Section 107 of the IPC and discussed the aspect of abetment of suicide and also instigation on the part of the accused and submitted that the Court has also decided the powers under Section -482 of Cr.P.C. for quashment of proceedings by indicating requisite test for deciding the allegation made in the complaint. While exercising the power under Section-482 of IPC for quashment and also, indicated certain limitations and necessary requirement of the Section-482 of Cr.P.C. The relevant paragraphs-24 and 25 of the judgment are reproduced as under:-

24. The essence of abetment lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. In Ramesh Kumar v. State of Chhattisgarh 9, a three-judge Bench of this Court, speaking through Justice RC Lahoti (as the learned Chief Justice then was), observed:

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

25. A two judge Bench of this Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi 10), speaking through Justice DK Jain, observed:

"19. As observed in Ramesh Kumar [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self."

9. He has further drawn my attention towards the judgment of Hon'ble Supreme Court in the case of Praveen Pradhan Vs. State of Uttranchal & Anr. reported in 2012 (9) SCC 734 and has submitted that there cannot be straight-jacket formula for exercising under section-482 of Cr.P.C. or apprehending the offence registered under Section-306, 498A of IPC in the present case since prima-facie case is made out. The relevant paragraphs-17, 18 and 19 of the judgment are reproduced as under:-

17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (Vide: State of Punjab v. Iqbal Singh, AIR 1991 SC 1532; Surender v. State of Hayana, (2006) 12 SCC 375; Kishori Lal v.State of M.P., AIR 2007 SC 2457; and Sonti Rama Krishna v. Sonti Shanti Sree,AIR 2009 SC 923.)

18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 Cr.P.C.

19. Thus, the case is required to be considered in the light of aforesaid settled legal propositions. In the instant case, alleged harassment had not been a casual feature, rather remained a matter of persistent harassment. It is not a case of a driver; or a man having an illicit relationship with a married woman, knowing that she also had another paramour; and therefore, cannot be compared to the situation of the deceased in the instant case, who was a qualified graduate engineer and still suffered persistent harassment and humiliation and

additionally, also had to endure continuous illegal demands made by the appellant, upon non-fulfillment of which, he would be mercilessly harassed by the appellant for a prolonged period of time. He had also been forced to work continuously for a long durations in the factory, vis -à-vis other employees which often even entered to 16-17 hours at a stretch. Such harassment, coupled with the utterance of words to the effect, that, "had there been any other person in his place, he would have certainly committed suicide" is what makes the present case distinct from the aforementioned cases considering the facts and circumstances of the present case, we do not think it is a case which requires any interference by this court as regards the impugned judgment and order of the High Court. The appeal is, therefore, dismissed accordingly.

10. Mr. H.M. Shah, learned advocate appearing on behalf of the respondent – complainant has also submitted that the chargesheet is filed in the present case, which clearly indicates that there is prima-facie material is available against the present applicants, moreover, from the bare reading of the FIR, it transpires that there is continuous harassment to the deceased by the present applicants. Therefore, he has submitted that prima-facie case is made out. Therefore, he has prayed this Court to exercise the inherent power under Section -482 of Cr.P.C. by not quashing the FIR registered against the applicants.

11. I have considered the rival submissions made at the bar. I have also considered the judgments, which are cited at the bar by the learned advocate for the applicants. There is no doubt that ratio of that judgments is binding to this court, but in the facts and circumstances of the present case, prima-facie, it transpires from the bare reading of the FIR that there is continuous harassment due to non-conceive of the deceased after a married life of 05 years and the deceased was given mental and physical torture. Thereafter, due to sell out the golden ornaments, which were given by the father of the deceased at the time marriage to the deceased. Therefore, the deceased has told her father about the mental and physical torture was given by the applicants and family members. Though the said incident was alleged before 12 months, the deceased admittedly staying at matrimonial home and therefore, it can be certainly presumed that when she has given mental as well as physical torture, she made a complaint to his father at the time when she visited her parental home. Therefore, it cannot be said that there is no prima-facie material is available against the applicants. While adjudicating on an application under Section- 482 of Cr.P.C., the task of High Court is to determine whether 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 did or did not prima- facie constitute an offence or make out case against the accused. The allegations made in the said FIR clearly attracts the ingredients of Section-306 & 498A of IPC, which are required to decided at the time of conclusion of trial. Since the prima-facie offence is made out and required to be adjudicated by proper criminal trial, this Court is of the opinion that the proceedings initiated pursuant to the quashing of FIR under Section-482 of Cr.P.C. more particularly, considering the observations of the judgments cited

by the learned APP in the case of Mahendra K.C. Vs. State of Karnataka reported in (2022) 2 SCC 129, this Court do not think fit to exercise the discretionary powers under Section -482 of Cr.P.C.

12. In the facts and circumstances of the case, the present application is dismissed. Rule is discharged. Interim relief, if any, stands vacated forthwith.