

(2023) 07 GUJ CK 0038
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 16601 Of 2019

Siddharth Balubhai Vaghela & Ors

APPELLANT

Vs

State Of Gujarat & Anr

RESPONDENT

Date of Decision : 05-07-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 114, 323, 498A, 504

Citation : (2023) 07 GUJ CK 0038

Hon'ble Judges : Sandeep N. Bhatt, J

Bench : Single Bench

Advocate : Siraj R Gori, Soaham Joshi, Vishvajitsinh Chauhan, Chintan S Popat

Final Decision : Allowed

Judgement

Sandeep N. Bhatt, J

1. By way of present application, under Section 482 of the Code of Criminal Procedure, 1973, the applicants seek quashment of the impugned FIR being CR-I No.110 of 2019 registered with the Kodinar Police Station, District : Gir-Somnath for the offences punishable under Sections 498-A, 323, 504 and 114 of the Indian Penal Code.

2. The brief facts of the prosecution case is that before five years of the complaint, the applicants were treating the victim very rudely and they have given physical and mental torture to the victim – wife and thereby committed an offence as alleged in the complaint.

3. Heard learned advocates.

4. Learned advocate Mr.Siraj R. Gori for the applicants has submitted that on bare reading of the complaint, the complainant has filed it with mala fide intention, as the marriage is solemnised in the year 2007 and she was staying with the applicant No.1 till the year 2014 and thereafter, in the year 2019, she

filed a complaint by narrating the incident which has occurred before five years back. He has submitted that the allegations are made against all the family members by the complainant and thereby, the complainant has tried to drag all the family members in the alleged offence. He has submitted that the applicant No.2 is aged about 73 years and applicant No.3 is almost bed-ridden due to ill-health. He has submitted that out of three sisters-in-law, two are married and are living at their matrimonial homes and another is a teacher at Diu and residing there since long. The brother-in-law is married in the year 2010 and since then, he has residing at Veraval. He has submitted that no ingredients are satisfied as alleged in the complaint. He has submitted that some of the applicants are Government servants. He has submitted that this is a gross case of abuse of process of law. He has submitted that this petition may be allowed.

5. Per contra, learned advocate Mr.Chaudhary for learned advocate Mr.Popat for the complainant has submitted that looking to the complaint, prima facie, the ingredients of the provisions of the Indian Penal Code are satisfied. He has submitted that though the marriage is solemnised in the year 2007, but there was continuous torture by the in-laws and the husband. He has submitted that as the wife has given birth of baby girl, the applicants were not treated her properly and were giving mental torture for that. He has submitted that victim is staying at her parental home since long. He has fairly submitted that there is no explanation for filing a complaint after about five years delay. He has submitted that this application may be allowed.

6. Learned APP Mr.Joshi for the State has supported the case of the prosecution. He has submitted that there is prima facie case against the applicants. He has submitted that this Court should not exercise the powers in favour of the applicants at this stage. He has submitted that this application may be dismissed.

7. I have heard rival submissions made by the learned advocates for the respective parties. I have perused the documents available on record. The following points are weighed with this Court for deciding the application :

The complaint is lodged after about five years from the alleged incident.

The complaint is lodged in the year 2019 and the alleged incident which is mentioned by the complainant in the FIR is of the year 2014.

The marriage is solemnised in the year 2007, which shows that for seven years, there was no complaint against the applicants by the complainant.

The cause is very stale.

It is a case of over implication and all the family members are dragged into the offence.

The normal place of residence of many applicants are far from the place of occurrence.

Applicant No.1 is the husband, who is doing private job. Applications No.2 and 3

– father-in-law & mother-in-law are aged about 73 and 66 years, respectively.

Applicant No.4 – brother-in-law, who is residing at Veraval after his marriage since the year 2010.

Applicants No.5 to 8 are the sisters-in-law. Out of them, two are married since long and residing at their matrimonial homes and one is unmarried but is a teacher at Diu and residing there.

The demeanor of the complainant is also relevant.

This Court has failed to understand that why the complainant has not filed a complaint on the earlier occasion, as alleged.

No ingredients of any offence is satisfied, as alleged in the complaint.

It is a case of gross abuse of process of law.

8. Considering the totality of the case, this is a fit case to exercise the powers under Section 482 of the Code of Criminal Procedure, 1973 in favour of the applicants keeping in mind the observations made by the Hon'ble Apex Court in the case of State of Haryana V/s Bhajan Lal reported in AIR 1992 SC 604, which reads as under :

"In the backdrop of the interpretation of the various relevant provisions of the Code under Ch.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 Art.226 or the inherent powers under sec.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 sec.156(1) of the Code except under an order of a Magistrate within the purview of sec.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 sec.156(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.”

9. At this stage, it is also relevant to refer to the judgment of the Hon’ble Apex Court in the case of Inder Mohan Goswami and Another versus State of Uttaranchal reported in (2007) 12 SCC 1, more particularly para : 23 & 24 thereof, which read as under :

“23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Sec. 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Sec. 482 CrPC can be exercised:

[(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.]

24. Inherent powers under Sec. 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself'. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute. Discussion of decided cases.”

10. In view of above, the impugned FIR needs to be quashed and set aside.

11. For the reasons recorded above, the following order is passed.

11.1 This application is allowed.

11.2 The impugned FIR being CR-I No.11205035210212 registered with the

Nakhatrana Police Station, District : Kachchh West – Bhuj is quashed and set aside.

11.3 Consequently, the subsequent proceedings, if any, arising out of the same FIR are also hereby quashed and set aside.

11.4 Rule is made absolute accordingly.

Direct service is permitted.