

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 1279 of 2022**

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REKHABEN W/O HITENDRABHAI VANVI & ORS.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR KRUNAL L SHAHI(6519) for the Applicant(s) No. 1,2,3

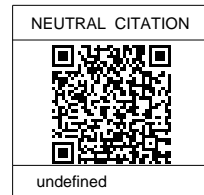
MS. AMAN A SHAIKH(8366) for the Respondent(s) No. 2

MS CM SHAH, APP for the Respondent(s) No. 1

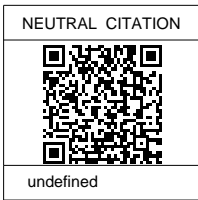
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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA**Date : 06/05/2024****ORAL ORDER**

1. By invoking inherent and extraordinary powers of this Court, the applicants – original accused have preferred this quashing application in relation to the FIR being C.R.No.11203030210469 of 2021 registered with Kesod Police Station, Junagadh for the offence punishable under Sections 498(A), 323, 504, 506(2) read with Section 114 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961.
2. This Court has heard learned counsel Mr.Krunal Shahi and learned counsel Ms.A.A. Shaikh for the respective parties.
3. Brief facts leading to file present application are that the marriage of second respondent Sangita Rathod was

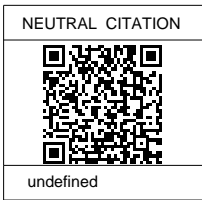


solemnized with accused Jitendra Rathod on 03.05.2009. The husband is serving in Army and his job is transferable. After the marriage, the second respondent went to her matrimonial home at Dholaji where she had resided in a joint family, consisting of father in law and mother in law. She lodged an FIR inter alia alleging that during the span of marriage life i.e. from 03.05.2009 to 21.02.2021, she was subjected to cruelty and harassment by the husband and his relatives. Admittedly, the present applicants are married sisters in law and their marriage solemnized much before the marriage of the second respondent and all three sisters in law living at their respective matrimonial home. According to her case, after six months of the marriage, she was harassed by mother in law on the petty issue of household works and demanded by her the gold ornament to be brought from her parental home. So far as applicants are concerned, it is alleged that as and when they come to the matrimonial home at Dholaji, they have aided and abetted the accused in committing the offence of cruelty. One of the sisters in law viz. Rekhaben against whom, it is alleged that when she came to matrimonial home by raising the dispute, she caused a physical harm and



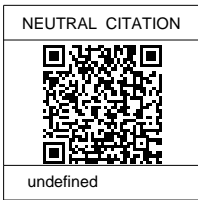
abused her. So far as husband is concerned, it is alleged that he is maintaining illegal relationship with the woman named in the FIR and on this issue, the dispute arose between husband and wife and lastly, on 21.02.2021, she was severally beaten by her husband and driven out from the matrimonial home and since then, she is living at Kesod.

4. In the aforesaid facts and circumstances, the three married sisters in law are before this Court with the present application inter alia alleging that the criminal proceedings against them is manifestly attended with malafide and is maliciously instituted with an ulterior motive and considering the general allegations of harassment made against them, no any offence is made out and therefore, they prayed to quash the proceedings.
5. Mr.Krunal Shahi, learned counsel appearing for the applicants has submitted that there is an inordinate delay in lodging the FIR as the marriage span is of 12 years and according to the wife, after six months of the marriage, she suffered a mental and physical harassment, for which, the FIR came to be lodged on 29.05.2021. That three applicants being married sisters in law have been falsely



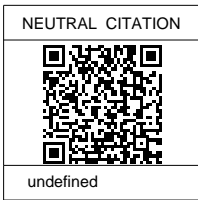
implicated by alleging general allegations of harassment and thus, the ingredients of alleged offence are not attracted.

6. In view of the aforesaid contentions, it is submitted that where the proceedings instituted with malafide intention and the allegations do not disclose or constitute any offence, the continuation of the criminal proceedings would nothing, but an amount to gross abuse and misuse of the process of law and Court and thus, the same deserves to be quashed.
7. On the other hand, Ms.Shaikh, learned counsel appearing for and on behalf of respondent no.2, has submitted that so far as applicants are concerned, there is specific instances of harassment being disclosed in the FIR and one of the applicants Ms.Geetaben had caused physical injuries to the second respondent. Thus, at this stage, the Court may not examine the genuineness or reliability of the allegations. Thus, therefore, she would urge that no case is made out to quash the proceedings by invoking inherent powers of this Court.
8. The issue falls for consideration of this Court as to whether the FIR and consequential proceedings are liable to be



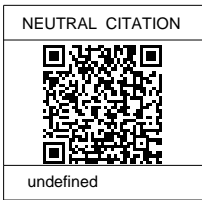
quashed in exercise of inherent powers of this Court.

9. The Apex Court in a number of cases has laid the scope and ambit of Court's powers under Section 482 of the Cr.P.C. Inherent powers conferred upon the High Court with the purpose and object of advancement of justice. In case, solemn process of Court is sought to be abused by a person with some oblique motive, a Court has to thwart the attempt at every threshold. The Court cannot permit a prosecution to be continued if the case falls for in one of the categories as illustratively enumerated by the Apex Court in **State of Haryana Vs. Bhajanlal (1992 Supl. (1) SCC 335)**.
10. The applicants have been charged for the offence of cruelty and demand of dowry. Recently, the Apex Court in the case of **Kahkashan Kshusar @ Sonam Vs. State of Bihar (2022 Livelaw Supreme Court 141)**, while dealing with the prosecution initiated by the wife against the in-laws in relation to the act of cruelty and demand of dowry, observed and held that the tendency of implicating husband and all his immediate relations is also not uncommon. The Courts have extremely careful and conscious in dealing with these complaints and must take



pragmatic realities into consideration while dealing with the matrimonial cases.

11. In the facts of present case, the marriage of the applicants solemnized much before the marriage of the second respondent and admittedly, they are living at their respective matrimonial home. So far as applicants, who are sisters in law are concerned, the general allegations of harassment being made that they are instigating the mother in law in committing the offence of cruelty. The allegation of physical harassment made against the applicant – Geetaben seems to be false as on which date and on whose presence, she was beaten up by her that has not been disclosed. Thus, prima facie it appears that due to matrimonial dispute with the husband who is serving in Army and the allegations against him for maintaining extramarital affairs, the questioned FIR after 12 years of the marriage life came to be filed, against the entire family of the husband. Thus, the allegations made against the husband would not fall under the ingredients of the alleged offence and if the same is accepted to be true, do not constitute any offence or made out the case against the applicants herein.



12. The present case is fully covered by the categories (i), (iii) and (vii) as enumerated by the Apex Court in the case of State of Haryana Vs. Bhajanlal reported (1992 Suppl. (1) SCC 335).
13. For the reasons aforementioned, case is made out for exercising inherent powers to prevent the abuse of process of law and Court.
14. Resultently, the application is **allowed**. FIR being C.R.No.11203030210469 of 2021 (Criminal Case No.1763/2021) registered with Kesod Police Station, Junagadh and consequential proceedings thereof qua the applicants are quashed.
15. The observations made herein are tentative in nature. The Trial Court shall not get influenced by the observations made hereinabove, so far as the case of the husband is concerned.

Direct Service is permitted.

(ILESH J. VORA,J)

Rakesh