

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (DOMESTIC VIOLANCE) NO. 7414
of 2023****With
CRIMINAL MISC.APPLICATION (FIXING DATE OF EARLY HEARING) NO.
1 of 2024****In R/SPECIAL CRIMINAL APPLICATION NO. 7414 of 2023**

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DHARMESHBHAI RAIYABHAI BAMBHANIYA

Versus

POONAMBEN HARDIKBHAI SOSA & ANR.

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Appearance:

MR NIKHILESH J SHAH(3007) for the Applicant(s) No. 1

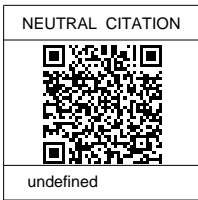
MR. RAHIL P JAIN(7305) for the Respondent(s) No. 1

MR MANAN MEHTA, APP for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 06/05/2024****ORAL ORDER**

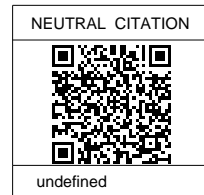
1. Heard learned advocates for the respective parties.
2. **RULE.** Learned advocates waive service of notice of rule on behalf of the respective respondents.
3. Considering the facts and circumstances of the case and since it is jointly stated at the Bar by learned advocates on both the sides that the dispute between the parties has been resolved amicably, this matter is taken up for final disposal forthwith.
4. By way of this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."), the applicants have prayed to quash and set aside the



proceedings of Criminal Misc. Application No.59 of 2020 pending before learned JMFC, Rajkot and also set aside the order dated 21.04.2023 passed below Exhibit 13 in Criminal Misc. 59 of 2020.

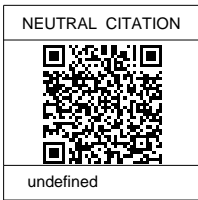
5. Learned advocates for the respective parties submitted that during the pendency of proceedings, the parties have settled the dispute amicably and pursuant to such mutual settlement, the original complainant has also filed an Affidavit, which is taken on record. In the Affidavit, the original complainant has categorically stated that the dispute with the applicant has been resolved amicably and that he has no objection, if the present proceedings are quashed and set aside since there is no surviving grievance between them.

6. Having heard learned advocates for the respective parties and considered the material available on record, it appears that the petitioner is a distant relative and brother-in-law of respondent No.1, residing approximately 800 kilometers away from the respondent No.1's residence. The dispute has been amicably settled between the husband and wife, who have obtained a divorce and are living separately, having withdrawn all proceedings, including those under Section 498A of the IPC. However, as the matter has been amicably resolved between the parties, proceeding with the matter would serve no fruitful purpose. It appears that petitioners are facing charge of Section 498A of IPC. Therefore, as per the allegations made in the complaint, ingredient of Section 498A is made out. In this regard, it would be apposite to refer the decisions of the Apex



Court in case of **Abhishek vs. State of Madhya Pradesh** reported in **2023INSC779 / (Criminal Appeal No. 1457 of 2015)** and in case of **Preeti Gupta and another vs. State of Jharkhand and another [(2010) 7 SCC 667]**, it is observed that “this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that 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, as allegations of harassment by husband’s close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection”.

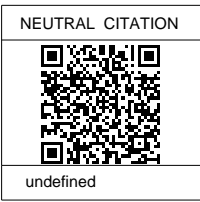
7. In view of the principle laid down by the Apex Court in the cases of (i) **Gian Singh Vs. State of Punjab & Anr.**, reported in (2012) 10 SCC 303, (ii) **Madan Mohan Abbot Vs. State of Punjab**, reported in (2008) 4 SCC 582, (iii) **Nikhil Merchant Vs. Central Bureau of Investigation & Anr.**, reported in 2009 (1) GLH 31, (iv) **Manoj Sharma Vs. State & Ors.**, reported in 2009 (1) GLH 190 and (v) **Narinder Singh & Ors. Vs. State of Punjab & Anr.** reported in 2014 (2) Crime 67 (SC), in the opinion of this Court, the further continuation of criminal proceedings against the applicant/s in relation to the impugned FIR would cause unnecessary harassment to the applicant/s. Further, the continuance of trial pursuant to the mutual settlement arrived at between the parties would be a futile exercise. Hence, to secure



the ends of justice, it would be appropriate to quash and set aside the impugned FIR and all consequential proceedings initiated in pursuance thereof under Section 482 of the Cr.P.C..

8. In the aforesaid backdrop, complaint is filed. It is necessary to consider whether the power conferred by the High Court under section 482 of the Code of Criminal Procedure is warranted. It is true that the powers under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage as the Hon'ble Supreme Court has decided in the case of **Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS & Anr.**, reported in AIR 2006 SC 2872.

9. In the result, the application is allowed. Proceedings of Criminal Misc. Application No.59 of 2020 pending before learned



JMFC, Rajkot and the order dated 21.04.2023 passed below Exhibit 13 in Criminal Misc. 59 of 2020 are hereby quashed and set aside qua the applicant herein. Rule is made absolute. Direct service is permitted. If the applicant is in jail, the jail authority concerned is directed to release the applicants forthwith, if not required in connection with any other case.

10. Since the main matter is disposed of, the application for fixing early date does not survive. Hence, the same is disposed of accordingly.

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(HASMUKH D. SUTHAR,J)