



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 4921 of 2024**

PARTH MUKESHKUMAR VYAS
Versus
STATE OF GUJARAT & ANR.

Appearance:

PRATEEK S BHATIA(8629) for the Applicant(s) No. 1
for the Respondent(s) No. 2

MR MANAN MEHTA, APP for the Respondent(s) No. 1

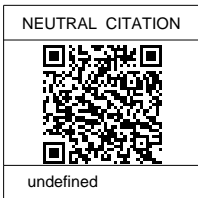
CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 06/05/2024

ORAL ORDER

1. By way of this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."), the applicant/s has prayed to quash and set aside the complaint being **FIR being CR No.11216024240064 registered with Kalol City Police Station, Gandhinagar**, for the offences under Sections 354 and 354A of the IPC and all the consequential proceedings arising therefrom.

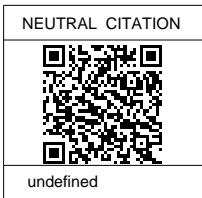
2. When the matter was called out, none present on behalf of the petitioner. It appears that first time, the matter was listed before this Court on 19.04.2024 and thereafter, it was adjourned from time to time. It appears that petitioner is not interested to proceed with the matter. In absence of the petitioner, this matter is taken up for final disposal.



3. Prima facie, it appears that the offence is against a Doctor, who is working in Rajesh Hospital. Applicant is facing charge of Section 354 and 354A of the IPC. Prima facie, it appears that involvement of the accused is disclosed and the allegations of Section 354 and 354A of the Indian Penal Code, 1860 are also disclosed and complainant approached the accused for the check up and as she was facing the gyanec problem and at that time, accused caught her hand by offering a job and tried to forcefully touch the first informant and thereby he has committed an offence.

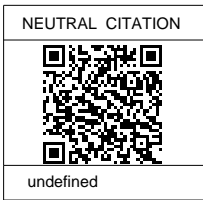
4. Learned APP has also vehemently opposed the present petition and argued that allegations leveled in the impugned FIR against the present petitioner are serious in nature. In the present offence, the present applicant has tried to forcefully touch the first informant. Hence, considering the fact that investigation is at nascent stage, she has requested to dismiss the present petition.

5. Perusing the complaint, it appears that the act of accused amounts to modesty of victim and indulged in the sexual harassment with physical contacts and advances of unwelcome explicit sexual overtures and as the offence is against the woman and woman has a right to live her life with the dignity. Considering the aforesaid fact and act on



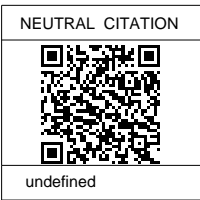
the part of the accused, it appears that *prima facie*, offence is made out.

5.1. It is settled proposition of law that no exception under law can be so absolute that it becomes a license for the commission of a crime against society. The action of the offender is shocking the sense of decency of a woman. Indian culture and society honours modesty of women and any act that is seen as an insult to modesty is considered not to be a grave offence only but moral wrong also. The offence of outraging the modesty of a woman is not limited to physical acts of violence but also includes any verbal or non-verbal conduct that is intended to insult the same. The offence is considered in present time the issue of the safety and security of women has come to the forefront with several instances and cases of sexual offences against women being reported. The Indian government has taken steps to strengthen laws against sexual offences, including the introduction of stricter deterrents for rape and sexual assault. However, sexual offences against women continue to be a major problem, efforts are still needed to ensure that laws are effectively implemented. It is important for individuals to be aware of their rights and for society to take a zero-tolerance approach toward sexual offences.



6. At this stage, decision of the Hon'ble Supreme Court in the case of **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra** reported in **2021 SCC OnLine SC 315**, is required to be referred to wherein it is observed in paragraph 57 as under:

"57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge: i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences; ii) Courts would not thwart any investigation into the cognizable offences; iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on; iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court); v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint; vi) Criminal proceedings ought not to be scuttled at the initial stage; vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule; viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police,



since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C. ix) The functions of the judiciary and the police are complementary, not overlapping;...”

7. Considering the aforesaid fact, it appears that as the investigation is at nascent stage and complaint is filed recently . In view of above, no case is made out to entertain this application. Hence, the same is dismissed at admission stage.

KUMAR ALOK

(HASMUKH D. SUTHAR,J)