



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 5544 of 2024**

With

R/SPECIAL CRIMINAL APPLICATION NO. 13434 of 2023

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SAIFEEALIBHAI HUSENBHAI MULLAMITHA

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR A A ZABUAWALA(6823) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MS DIVYANGNA JHALA, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 06/05/2024

ORAL ORDER

1. Learned advocate Mr.A.N. Pathan states that he has instructions to appear on behalf of the original complainant and thereby, seeks permission to file his Vakalatnama, which is granted.

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 applicant/s has/have prayed to quash and set aside the



complaint being **FIR being CR No.11821003230016 of 2023 registered with Mahila Police Station, Dahod**, for the offences under Sections 498(A), 323, 504, 506 and 114 of the IPC and and Sections 3 and 4 of the Dowry Prohibition Act all the consequential proceedings arising therefrom.

5. Going through the compilation of the petition, it appears that complain is filed at the instance of respondent No.2. In the petition being Criminal Misc. Application No.5544 of 2024, the present applicant is husband and in the petition being Special Criminal Application No.13434 of 2023 , applicant Nos.2 and 3 are the mother-in-law and uncle and the complainant are same in both the matters. It appears that petitioner husband and respondent No.2 tied their knot and and performed their marriage as per Muslims Rites and Rituals on 04.07.2003. It is alleged that petitioner and his family members were harassing the complainant. Therefore, the present complaint is lodged. Now dispute is settled is settled between the parties. In view of above, the present application be allowed.

6. 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 / placed on record. In the Affidavit, the original complainant has categorically stated that the dispute with the applicant/s 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.

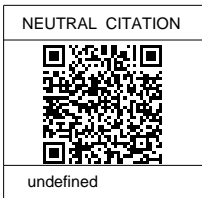
7. Having heard learned advocates for the respective parties and considered the material available on record, in the complaint, it is alleged that petitioner Husband along with his family members have mentally and physically harassed the complainant. It appears that petitioners are facing charge of Section 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”*



7.1. So far as offence under Sections 504 and 506 of IPC are concerned, the learned Apex Court in the case of **Mohammad Wajid and Anr. v. State of U.P. and Ors., reported in 2023 LiveLaw (SC) 624: 2023 INSC 683**, has held that:

“Indian Penal Code, 1860; Section 504 - Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant - In judging whether particular abusive language is attracted by Section 504, IPC, the court has to find out what, in the ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant. (Para 25- 26)

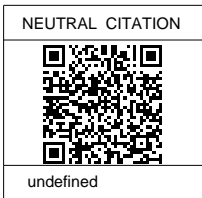
Indian Penal Code, 1860; Section 504 - One of the essential elements for constituting an offence under Section 504 of the IPC is that there should have been an act or conduct amounting to intentional insult. Where that act is the use of the abusive words, it is necessary to know what those words were in order to decide whether the use of those words amounted to intentional insult. In the absence of these words, it is not possible to decide whether the ingredient of intentional



insult is present. (Para 28)

Indian Penal Code, 1860; Section 506 - Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant. (Para 27) 3 Interpretation of Statutes- All penal statutes are to be construed strictly - Court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the words. (Para 19-21)"

7.2. 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** and in case of **State of Haryana v. Bhajan**



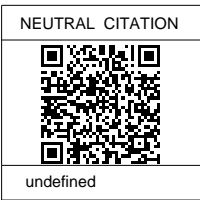
Lal, reported in **1992 Supp (1) SCC 335**, the Apex Court has set out the categories of cases in which the inherent power under Section 482 CrPC can be exercised and held in para 102 as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter 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 Section 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 :

(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.

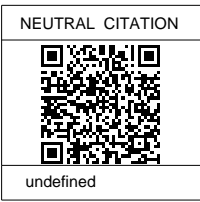
(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to



spite him due to private and personal grudge.”

8. Having heard learned advocates on both the sides and considering the facts and circumstances of the case as also 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..

9. In the result, the application is **allowed**. The impugned complaint being **FIR being CR No.11821003230016 of 2023 registered with Mahila Police Station, Dahod** as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside qua the applicant/s herein in both the matters. Rule is made absolute. Direct service is permitted.



10. If the applicants are in jail, the jail authority concerned is directed to release the applicants forthwith, if not required in connection with any other case.

KUMAR ALOK

(HASMUKH D. SUTHAR,J)