**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 5647 of 2024**

=====

PARTHBHAI AMULAKBHAI VYAS  
Versus  
STATE OF GUJARAT & ANR.

=====

Appearance:

MR NIRAV K PADHIYAR(5678) for the Applicant(s) No. 1  
for the Respondent(s) No. 2

MR KM ANTANI, ADDL PUBLIC PROSECUTOR for the Respondent(s) No. 1

=====

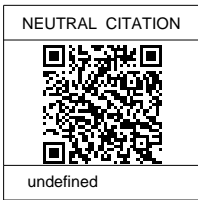
**CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

**Date : 09/05/2024****ORAL ORDER**

[1.0] Learned advocate Mr. Jay R. Shah states that he has instructions to appear on behalf of the original complainant and seeks permission to file her Vakalatnama, which is granted. Heard learned advocates for the respective parties.

[2.0] **RULE.** Learned advocates waive service of note of rule on behalf of the respective respondents.

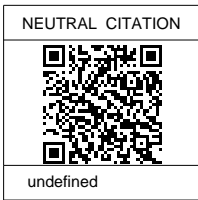
[3.0] Considering the facts and circumstances of the case and since it is jointly stated at the Bar by learned advocates on both the sides that the dispute between the parties has been resolved amicably, this matter is taken up for final disposal forthwith.



[4.0] By way of this petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “CrPC”), the petitioner has prayed to quash and set aside the FIR being **CR No.11195050240257 of 2024 registered with Tharad Police Station, District; Banaskantha** for the offences punishable under Sections 294(b) and 506(2) of the Indian Penal Code, 1860 and to quash all other consequential proceedings arising therefrom.

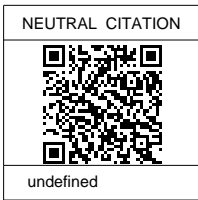
[5.0] Learned advocates for the respective parties submitted that during the pendency of proceedings, the parties have settled the dispute amicably and pursuant to such mutual settlement, the original complainant has also filed an Affidavit dated 27.04.2024 which is taken on record. In the Affidavit, the original complainant has categorically stated that the dispute with the petitioner 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.

[6.0] Going through the impugned FIR it appears that the same is filed at the instance of respondent No.2 alleging that respondent No.2 came to know about an affair between his wife with the present petitioner and while complainant was going through the market, accused has administered a threat and in that regard complaint was filed.



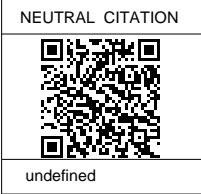
[7.0] It is necessary to consider whether the power conferred by the High Court under section 482 of the CrPC is warranted. It is true that the powers under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see 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**.

[8.0] 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)** as also considering the fact that now the dispute is amicably settled for which respondent No.2 has also filed an affidavit affirming the fact of settlement and hence, in the opinion of this Court, the further continuation of criminal proceedings against the present petitioner in relation to the impugned FIR would cause unnecessary harassment to the petitioner. Further, the continuance of trial pursuant to the mutual settlement arrived at between the parties would be a futile exercise. Therefore, 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..

[9.0] Insofar as offence under Section 294(b) of the IPC is concerned, mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) of the IPC and to prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others. The test of obscenity under Section 294(b) of IPC is

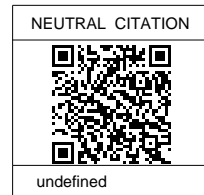


whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. In this regard reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **N.S. Madhanagopal & Anr. vs. K. Lalitha** reported in **2022 LiveLaw (SC) 844**.

[9.1] Insofar as offence under Section 506(2) of the IPC alleged against the present petitioner is concerned, it is worth to refer to the decision of the Hon'ble 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**, wherein it is held as follows:

*“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)”*

[9.2] Further, in the case of **State of Haryana v. Bhajan Lal** reported in **1992 Supp (1) SCC 335**, the Hon'ble Apex Court has set out the categories of cases in which the inherent power under Section 482 of the Code can be exercised and held in paragraph 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 :*

*(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.*

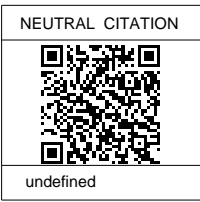
*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) 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 noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under sec. 155(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.”*

[10.0] In the result, petition is allowed. The impugned FIR being **CR No.11195050240257 of 2024 registered with Tharad Police Station, District; Banaskantha** as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside *qua* the petitioner herein. If the petitioner is in jail, the jail authority concerned is directed to release the petitioner forthwith, if not required in connection with any other case. Rule is made absolute to the aforesaid extent only. Direct service is permitted.

DRASHTI K. SHUKLA

**(HASMUKH D. SUTHAR,J)**