

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 324 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 TO 5 - NO

PARUL MAYURBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

MR BP GUPTA for Petitioners

MR KP RAVAL, APP for Respondent No. 1

MR VASANT S SHAH for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 31/03/99

C.A.V. JUDGEMENT

Present petitioners-original accused have preferred this application under sec.482 of Cr.P.C. for quashing the proceedings in Criminal Case No.251 of 1998 pending in the Court of learned Chief Judicial Magistrate First Class at Himmatnagar wherein the present respondent No.2-original complainant has filed the complaint directly in the Court alleging that present petitioners

have committed the offence under secs.498(A), 506(2), 504 and 114 of IPC. On receiving the above complaint, learned J.M.F.C. has issued the process under sec.156(3) of Cr.P.C. and directed the Police Inspector, Himmatnagar Town to enquire into the matter and submit the report.

2. In brief, the allegations referred in the complaint were that the complainant is the wife of accused No.1 and marriage of the complainant with the accused No.1 took place 10 years prior to the incident as per Hindu rites and customs. Prior to this marriage, accused No.1 had two daughters and a son out of earlier marriage. Later on his son died. Accused No.2 is the widow of son of accused No.2, accused Nos.2 and 5 are his daughters and accused No.4 is the husband of accused No.3. They are staying separately after their marriage in different cities with their families. Accused No.6 is the brother of accused No.1, accused Nos.7 and 8 are sister and her husband, accused No.9 is the brother of accused No.2 who is the widow of son of accused No.1, accused No.11 is the brother-in-law of accused No.9, accused No.10 is the wife of accused No.11 and accused No.12 is a well wisher of accused. With a view to grab the property, they all are harassing and threatening the complainant over telephone stating that she should withdraw the suit which she has filed, else she will be done to death. Though injunction was there, accused have committed breach of the order of the Civil Court and for that, contempt petition has also been filed against them. One complaint was also filed in the month of March, 1998 with the Police. Thereafter, she has filed the complaint directly before the Court and the Court has issued the process on 2-12-1998. Against which, the petitioners have filed the present Criminal Misc. Application in which notice was issued by this Court and respondent No.2-original complainant appeared through the learned counsel, who filed the affidavit and also produced xerox copy of the decree of divorce of the complainant of her first marriage with one Hiralal Bhagilal Shah and the abstract of the property in question.

3. I have heard learned counsel for the respective parties at length. I have also gone through the Criminal Case No.251 of 1998 which has been directly filed in the Court of learned JMFC at Himmatnagar by the complainant. It is established from the above complaint itself that the complainant had filed the complaint against 12 persons. The relations of these 12 persons have already been mentioned hereinabove. It is also established from the petition, affidavit filed by the

complainant and from the oral arguments of the learned counsel for the respective parties that husband of the complainant, i.e. accused No.1 has died on 21-12-1998. I have gone through the whole complaint. No specific allegation whatsoever has been made against any of the accused. Even date and time are also not mentioned and not a single incident has been narrated by the complainant in the complaint. What she has mentioned is that accused numbering 12 are threatening her over phone. For that also, she has not mentioned any date and time. Her allegations against the accused are that since they all are interested in the property, they are harassing her. But for that also, no specific allegation against any of them has been mentioned. In short, no ingredients of any nature of the offence has been established from the complaint. For the alleged disobedience of order of the Civil Court, she has filed the contempt petition which is pending in the Court. According to her, she has also given one application to the Police on 26-3-1998. So, it seems from the complaint itself that incident has taken place in March, 1998 whereas she has filed the complaint in the month of December, 1998. It seems from the said complaint that it is a vague complaint filed by the complainant against 12 persons out of which accused Nos.2,3,4,5 and 6 are ladies. Out of these ladies, one is a widow of son of deceased accused No.1, two are his daughters, one is his sister, one is the wife of brother of accused No.2 and one lady is the wife of brother-in-law of brother of accused No.2. Whereas accused No. 6 is the brother of accused No.1, accused No.7 is the brother-in-law of deceased accused No.1 and accused No.12 is the neighbour. It is established from the complaint itself that the complainant is staying at Himmatnagar. Alleged property is also situated at Himmatnagar and she has also filed the civil suit at Himmatnagar. All the accused are admittedly staying at various places in Ahmedabad. It seems from the record and proceedings that they have been joined merely because they are relatives of the deceased-accused No.1. When no particular time and date are mentioned in the complaint and when no ingredients of offence is prima-facie disclosed in the complaint, it is very difficult to connect the accused with the alleged crime. Moreover, civil disputes are also pending between the parties and just to pressurise them, she has filed the present complaint with ulterior motive by trying to involve all the relatives of accused No.1 as accused which is frivolous and vexatious. Therefore, the said complaint is required to be quashed.

4. Keeping in mind the judgment reported by this

Court (Coram: M.S.Parikh, J.) in 1993(1) G.L.H. UP 21, that when the dispute referred is of civil nature, process could not be issued by the Court, I am of the opinion that the present complaint requires to be quashed.

5. The complaint being Criminal Case No.251 of 1998 pending in the Court of learned J.M.F.C., Himmatnagar against the present petitioners-accused is hereby quashed and the impugned order passed by the learned Judicial Magistrate, First Class, Himmatnagar is set aside.

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