**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL MISC. APPLICATION NO. 11453 of 2007**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE J.B.PARDIWALA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAULATBEN W/O JANMOHAMMED ZAVERBHAI PARBATANI &
6....Applicant(s)
Versus
YASMINBEN WD/O AZIZ JANMOHAMED PARBATANI & 1....Respondent(s)

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Appearance:
DELETED for the Applicant(s) No. 1
MS LILU K BHAYA, ADVOCATE for the Applicant(s) No. 1 - 7
MR MM TIRMIZI, ADVOCATE for the Respondent(s) No. 1
MR HS JONI ADDITIONAL PUBLIC PROSECUTOR for the Respondent(s) No. 2

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**

**Date : 24/12/2014**

**CAV JUDGMENT**

1 By this application, under Section 482 of the Code of Criminal Procedure, 1973, the petitioners – original accused seek to invoke the inherent powers of this Court, praying for quashing of the First Information Report registered at the Jalalpore Police Station, District Navsari, as C.R. No.I-31 of 2007 for the offence punishable under Section 498A of the Indian Penal Code, 1860, and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

2 This seems to be a case of matrimonial dispute. The husband of the First Informant died on 5th May, 2006, as he was suffering from Cancer. The applicants herein are all family members of the husband, which includes the mother-in-law, brothers and sisters of the late husband.

3 The case of the First Informant in brief is as under:

The First Informant got married to one Azizbhai Janmohamed Parbatani in the year 1993. In the wedlock, two issue was born, the first issue in the year 1994, and the second issue in the year 1998. The First Informant started residing at 205, Royal Palace, Lokhandwala Complex, Andheri (West), Mumbai. The applicants herein were also residing in the same flat. It is alleged that shortly, after the marriage, the in-laws started harassing the First Informant, and demanded money. It is her case that

in the month of September 1996, she was driven out of her matrimonial home. In the year 2006, her husband passed away. It is her case that on 13th May, 2006, she left Bombay, and came down to Navsari, at her parental home. The First Information Report was lodged on 3rd May, 2007.

4 As usual, general and sweeping statements have been made in the First Information Report alleging harassment.

5 Ms. Lilu Bhaya, the learned advocate appearing on behalf of the applicants submitted that the First Information Report is nothing, but an abuse of process of law. Ms. Bhaya submitted that the First Information Report was lodged at the Valsad Police Station, on 3rd May, 2007, which was registered as C.R. No.I-0 of 2007, and thereafter, the same First Information Report was registered at the Jalalpore Police Station, District Navsari, vide C.R. No.I-31 of 2007, on 4th May 2007. Ms. Bhaya submitted that all the applicants were arrested, and were ordered to be released on bail.

6 The principal argument of Ms. Bhaya is that the police of the Jalalpore Police Station has no territorial jurisdiction to investigate the First Information Report, as all the acts of harassment complained by the First Informant are said to have been committed at Mumbai.

7 Ms. Bhaya submitted that having realized that her First Information Report would not be maintainable anywhere within the State of Gujarat, the First Informant, in the last part of the First Information Report, has stated that the applicants, even at Navsari, caused harassment to her. This vague allegation appears to have been levelled, according to Ms. Bhaya, only with a view to see that the issue of territorial jurisdiction does not crop up.

8 Ms. Bhaya submitted that even otherwise, no case is made out to prosecute the applicants on the basis of the frivolous First Information Report lodged by the First Informant.

9 Ms. Bhaya prays that there being merit in the application, the same be allowed, and the First Information Report be quashed.

10 On the other hand, this application has been opposed by Mr. M.M. Tirmizi, the learned advocate appearing on behalf of respondent No.1 – Original Informant. Mr. Tirmizi submitted that the First Information Report discloses commission of a cognizable offence, and the police should be permitted to complete the investigation. Mr. Tirmizi submitted that it cannot be said that no part of the cause of action had arisen within the territorial jurisdiction of the Jalalpore Police Station, District Navsari. In such circumstances, Mr. Tirmizi prays that there being no

merits in the application, the same be rejected.

11 Mr. H.S. Soni, the learned Additional Public Prosecutor appearing on behalf of Respondent No.2 – the State of Gujarat, has also opposed this application.

12 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is, whether the First Information Report deserves to be quashed.

13 The following facts are not in dispute:

(1) The marriage of the First Informant with the son of applicant No.1 was solemnized in the year 1993.

(2) The first child was born in the year 1994. The second child was born in the year 1998.

(3) In the year 2000, the First Informant stated residing separately with her husband and children on the 6th Floor of the Apartment.

(4) In the year 2006, the husband of the First Informant died on account of Cancer.

(5) On 13th May, 2006, the First Informant along with the children

came down and settled at the house of her brother at Navsari.

14 It appears that on 25th July 2006, the First Informant lodged a complaint with the Oshivara Police Station, Mumbai, against the applicants with respect to her 'Stridhan'. In the said proceedings, she made the following statement before the Senior Police Inspector, Oshivara Police Station, Mumbai, on 25th July 2006. A true copy of which is on record of this case. The statement reads thus:

> "I, Yasmin Aziz Parbatani, Muslim, 45 years, occupation – Nil, residing at C/o. Dr. M.M. Lakhani, Class-I Dist. Panchayat Quarters, Near Government Colony, Tithal Road, Balsad, Gujarat State. Mob.9228577566.
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> I am as above and residing at the above address with my two daughters namely 1) Alisha age 11 years and Saloni 7 years since 14th May 2006. My husband namely Aziz Parbatani, M/44 is expired on 5th May 2006. On 11th May, 2006 and on 13th May, 2006 my brother-in-law Mehmood Jan Mohmmed Parbatani, M/45 years, Salim Janmohammed Parbatani, M/47 years and sister in law Farzana Mehmood Parbatani, assaulted me to transfer the amount of Rs.11 laksh approx., from the account of my husband in UTI Bank (Oberoi Complex, Lokhandwala Branch) to their name. I informed abut the said incident to my brother M.M. Lakhani by SMS from my mobile. At that time my brother mediated in the said matter. But I wan again assaulted, and therefore, I took my two daughters and went to reside with my brother. My husband business of spare part and weighing scale with his brothers and mother.
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> I married to Aziz Jan Mohammed Parbatani in the year 1993 as per Muslim rituals and at that time we all were residing together till the year 2005 in Flat No.205, Building No.16 Royal Palace, Shastri Nagar, Lokhandwala. The said flat was purchased by my

husband and brother in laws in the name of my mother in law. Also my husband and brother-in-law namely Mehmood purchased the Room No.603 in the same society and we used to use both the rooms.

Since the year 2005 my husband was sick and thereafter we came to know that he was suffering by cancer. And due to that my family members started mentally harassing me and my husband. That time my brother-in-law Mehmood sold the flat No/.603 in Royal palace by obtaining signature of my husband forcibly. Thereafter in September, 2005 myself my husband alongwith our two daughters went to reside in R.No.106 B Wing, Swiss Corner, Shastri Nagar, Lokhandwala, Andheri (W), on rental basis for the period from 1.9.05 to 31.7.06. The said room is owned by Mirpuri Hariram and the agreement for Leave and License is executed between said Mirpuri Hariram and my husband and my husband has paid the deposit of Rs.50,000/- and rent not known is paid by my husband to the owner of the said room. During that period my husband was seriously sick and hence he was admitted in S.L. Raheja Hospital for medical treatment. I mostly used to stay with my husband in hospital. I kept my children in R.No.205, Royal Palace, to avoid their inconvenience and whenever my husband got discharge I used to go to Royal palace mostly and hence the room taken on rental basis in Swiss Corner was locked.

After death of my husband on 5th May, 2006, I went to my brother as above to Valsad to reside there. As per agreement the period of the said agreement was expiring on 31.7.2006 and therefore I informed to one of carpenter Shri Babloo Shrivastav, Mob. 982114502 on 24.7.06 on mobile and asked him to remove all furniture from the said flat and to take the same to Gujarat at that time he told me that before 7-8 days my husband sister, her husband and my mother-in-law were present in the said room and he was also called there for some work and I therefore contacted, the Estate Agent Manubhai Mob.No.98210 37330 who is known to me and verified the same and he also told me that the said room was opened and above said my relatives were present there. Said Manubhai further told me that my above said relatives are demanding the deposited amount of the said flat from him but he refused to pay the said deposit amount to them.

**I therefore immediately on 25.7.2006 sent one telegram to Oshivara Police Station and arrived to Oshivara Police Station on 25.7.06 from Gujarat. When I went to the said room and**

**checked I found all of my ornaments safe** but the business documents and other bank papers are not found in the cupboard of my husband. When I asked about the same to my brother-in-law Mehmood he told me that Motor Cycle of my husband is also with him.

**Now I am talking my Ornaments and Jewellery with me.** Shares standing in my and my husband name are also sold without my consent which I came to know after the enquiry.

My above statement is recorded in Marathi and readover, explained to me in Hindi which is correctly recorded."

15 In my opinion, the principal argument of Ms. Bhaya merits consideration. By no stretch of imagination, it can be said that even remotely a part of the cause of action arose at Navsari, so as to make the First Information Report maintainable at the Jalalpore Police Station.

16 The law, in this regard, is well settled. I may quote few decisions of the Supreme Court in this regard. In the case of ***Y. Abraham Ajith and others v. Inspector of Police, Chennai and another,*** reported in ***(2004) 8 SCC 100***, the Supreme Court made the following observations in paragraphs Nos.7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19:

> **"7.** Section 177 of the Code deals with ordinary place of inquiry and trial, and reads as follows:
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> "177. *Ordinary place of inquiry and trial.*- Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed."
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> **8.** Sections 177 to 186 deal with venue and place of trial. Section 177 reiterates the well-established common-law rule referred to in Halsbury's Laws of England (Vol. 9, para 83) that the proper and ordinary venue for the trial of a crime is the area of jurisdiction in

which, on the evidence, the facts occur and which are alleged to constitute the crime. There are several exceptions to this general rule and some of them are, so far as the present case is concerned, indicated in Section 178 of the Code which reads as follows:

> "178. Place of inquiry or trial.—(a) When it is uncertain in which of several local areas an offence was committed, or
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> (b) where an offence is committed partly in one local area and partly in another, or
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> .(c) where an offence is continuing one, and continues to be committed in more local areas than one, or
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> (d) where it consists of several acts done in different local areas,
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> it may be inquired into or tried by a court having jurisdiction over any of such local areas."

**9.** "All crime is local, the jurisdiction over the crime belongs to the country where the crime is committed", as observed by Blackstone. A significant word used in Section 177 of the Code is "ordinarily". Use of the word indicates that the provision is a general one and must be read subject to the special provisions contained in the Code. As observed by the Court in Purushottamdas Dalmia v. State of W.B., L.N. Mukherjee v. State of Madras, Banwarilal Jhunjhunwala v. Union of India and Mohan Baitha v. State of Bihar exception implied by the word "ordinarily" need not be limited to those specially provided for by the law and exceptions may be provided by law on consideration or may be implied from the provisions of law permitting joint trial of offences by the same court. No such exception is applicable to the case at hand.

**10.** As observed by this Court in State of Bihar v. Deokaran Nenshi a continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all, that it is one of those offences which arises out of the failure to obey or comply with a rule or its requirement and which involves a penalty, liability continues till compliance, that on every occasion such disobedience or non-compliance occurs or recurs, there is the offence committed.

**11.** A similar plea relating to continuance of the offence was examined by this Court in Sujata Mukherjee v. Prashant Kumar Mukherjee. There the allegations related to commission of alleged offences punishable under Sections 498-A, 506 and 323 IPC. On

the factual background, it was noted that though the dowry demands were made earlier, the husband of the complainant went to the place where the complainant was residing and had assaulted her. This Court held in that factual background that clause (c) of Section 178 was attracted. But in the present case the factual position is different and the complainant herself left the house of the husband on 15-4-1997 on account of alleged dowry demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at Chennai. That being so, the logic of Section 178(c) of the Code relating to continuance of the offences cannot be applied.

.**12.** The crucial question is whether any part of the cause of action arose within the jurisdiction of the court concerned. In terms of Section 177 of the Code, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

**13.** While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is, therefore, not a stranger to criminal cases.

**14.** It is settled law that cause of action consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

**15.** The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously, the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the

judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

**16.** The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

**17.** The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. In Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edn.), the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

**18.** In Halsbury's Laws of England (4th Edn.) it has been stated as follows:

> " 'Cause of action' has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."

**19.** When the aforesaid legal principles are applied, to the factual scenario disclosed by the complainant in the complaint petition, the inevitable conclusion is that no part of cause of action arose in Chennai and, therefore, the Magistrate concerned had no jurisdiction to deal with the matter. The proceedings are quashed.

The complaint be returned to Respondent 2 who, if she so chooses, may file the same in the appropriate court to be dealt with in accordance with law. The appeal is accordingly allowed."

17 In a recent pronouncement, in the case of ***Geeta Mehrotra and another v. State of U.P. and another***, reported in ***AIR 2013 SC 181***, the Supreme Court made the following observations in paragraphs Nos.20, 21, 22, 23, 24, 25, 26 and 27:

"**20.** It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao v. L.H.V. Prasad and Ors. reported in (2000) 3 SCC 693 : (AIR 2000 SC 2474) wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

"there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts."

The view taken by the judges in this matter was that the courts would not encourage such disputes.

**21.** In yet another case reported in AIR 2003 SC 1386 in the matter of B.S. Joshi and Ors. v. State of Haryana and Anr. it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus, for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320, Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power.

**22.** In the instant matter, when the complainant and her husband are divorced as the complainant-wife secured an ex parte decree of divorce, the same could have weighed with the High Court to consider whether proceeding initiated prior to the divorce decree was fit to be pursued in spite of absence of specific allegations at least against the brother and sister of the complainant's husband and whether continuing with this proceeding could not have amounted to abuse of the process of the court. The High Court, however, seems not to have examined these aspects carefully and have thus side-tracked all these considerations merely on the ground that the territorial jurisdiction could be raised only before the magistrate conducting the trial.

**23.** In the instant case, the question of territorial jurisdiction was just one of the grounds for quashing the proceedings along with the other grounds and, therefore, the High Court should have examined whether the prosecution case was fit to be quashed on other grounds or not. At this stage, the question also crops up whether the matter is fit to be remanded to the High Court to consider all these aspects. But in matters arising out of a criminal case, fresh consideration by remanding the same would further result into a protracted and vexatious proceeding which is unwarranted as was held by this Court in the case of Ramesh v.

State of Tamil Nadu (AIR 2005 SC 1989) (supra) that such a course of remand would be unnecessary and inexpedient as there was no need to prolong the controversy. The facts in this matter on this aspect was although somewhat different since the complainant had lodged the complaint after seven years of delay, yet in the instant matter the factual position remains that the complaint as it stands lacks ingredients constituting the offence under Section 498A and Section 3/4 Dowry Prohibition Act against the appellants who are sister and brother of the complainant's husband and their involvement in the whole incident appears only by way of a casual inclusion of their names. Hence, it cannot be overlooked that it would be total abuse of the process of law if we were to remand the matter to the High Court to consider whether there were still any material to hold that the trial should proceed against them in spite of absence of prima facie material constituting the offence alleged against them.

**24.** However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.

**25.** In the case at hand, when the brother and unmarried sister of the principal accused Shyamji Mehrotra approached the High Court for quashing the proceedings against them, inter alia, on the ground of lack of territorial jurisdiction as also on the ground that no case was made out against them under Sections 498A,/323/504/506 including Section 3/4 of the Dowry Prohibition Act, it was the legal duty of the High Court to examine whether there were prima facie material against the appellants so that they could be directed to undergo the trial, besides the question of territorial jurisdiction. The High Court seems to have overlooked all the pleas that were raised and rejected the petition on the solitary ground of territorial jurisdiction giving liberty to the appellants to approach the trial court.

**26.** The High Court in our considered opinion appear to have missed that assuming the trial court had territorial jurisdiction, it was still left to be decided whether it was a fit case to send the appellants for trial when the FIR failed to make out a prima facie case against them regarding the allegation of inflicting physical and mental torture to the complainant demanding dowry from the complainant. Since the High Court has failed to consider all these aspects, this Court as already stated hereinbefore, could have remitted the matter to the High Court to consider whether a case was made out against the appellants to proceed against them. But as the contents of the FIR does not disclose specific allegation against the brother and sister of the complainant's husband except casual reference of their names, it would not be just to direct them to go through protracted procedure by remanding for consideration of the matter all over again by the High Court and make the unmarried sister of the main accused and his elder brother to suffer the ordeal of a criminal case pending against them specially when the FIR does not disclose ingredients of offence under Section 498A/323/504/506, IPC and Sections 3/4 of the Dowry Prohibition Act.

**27.** We, therefore, deem it just and legally appropriate to quash the proceedings initiated against the appellants Geeta Mehrotra and Ramji Mehrotra as the FIR does not disclose any material which could be held to be constituting any offence against these two appellants. Merely by making a general allegation that they were also involved in physical and mental torture of the complainant-respondent No.2 without mentioning even a single incident against them as also the fact as to how they could be

> motivated to demand dowry when they are only related as brother and sister of the complainant's husband, we are pleased to quash and set aside the criminal proceedings insofar as these appellants are concerned and consequently the order passed by the High Court shall stand overruled. The appeal accordingly is allowed."

18 Even otherwise, independently of the issue of territorial jurisdiction, I do not find any substance in the allegations levelled in the First Information Report, more particularly, when from the year 2000, the First Informant was residing separately with her husband although in the same building, yet in a separate flat on the 6th Floor. Besides that, the statement of the First Informant dated 25th July 2006 before the Senior Police Inspector, Oshivara Police Station, Mumbai, also makes the picture abundantly clear.

19 In the aforesaid view of the matter, I have no hesitation in allowing this application.

20 In the result, this application is allowed.

21 The First Information Report registered at the Jalalpore Police Station, District Navsari, as C.R. No.I-31 of 2007, is hereby quashed. All the consequential proceedings, pursuant thereto, also stand terminated.

22 Rule is made absolute.

**(J.B.PARDIWALA, J.)**

chandresh