IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION NO. 2776 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS JUSTICE SONIA GOKANI

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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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ATULKUMAR MULJIBHAI BAXI & 2....Applicant(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:

MR EVANG CHHATRAPATI FOR MR NILESH A PANDYA, ADVOCATE for the Applicant(s) No. 1 - 3

MR ROHIT N PATEL, ADVOCATE for the Respondent(s) No. 2

MS NAYANA V PANCHAL, ADVOCATE for the Respondent(s) No. 2

MS C M SHAH, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MS JUSTICE SONIA GOKANI**

Date : 30/01/2015

ORAL JUDGMENT

1. The petitioner who is the son of respondent Nos.2 and 3, who were aged about 76 and 67 years at the time of preferring this petition, seeks quashment of the complaint being I C.R.No. 48 of 2010 registered with Makarpura Police Station, Vadodara under Sections 498A, 406 and 114 of IPC and Sections 3 and 7 of the Dowry Prohibition Act. The present petition is preferred under Section 482 of the Code of Criminal Procedure in the following factual background:

2. The respondent No.2 was married to petitioner No.1 in June 1993. They had purchased a residential house at Vaibhav Vatika, Vadodara. Later on, on having obtained the migration visas, they shifted to USA in the year 1997. Due to irretrievable breaking down of the marriage, they approached the Superior Court of New Jersey, Chancery Division-Family Part, Morris County by way of Docet No. FM-14-880-08 and the Court at New Jersey passed a decree of divorce, dissolving the marriage of petitioner No. 1 and that of the respondent No.2. The Court, while passing such decree, had granted the limited duration of alimony to the respondent No.2 for approximately four years commencing from May 1, 2009 terminating on June 30, 2003. There are other, further and consequential orders passed by the said Court on 24.04.2009. Petitioner continued to pay the maintenance to the

respondent No.2. However, there are averments made indicating that such payment was not so regular as was contemplated by the Court.

3. The respondent No.2, after this decree of divorce at USA, filed a complaint in question, being I-C.R.No. 48/2010 at Makarpura Police Station, Vadodara on 23.01.2010 against the petitioner No.1 and his parents being petitioner No.2 and 3. According to her, they stayed in India till 2006 and in the meantime her brother-in-law's family visited India and as their migration papers were ready, they have travelled abroad, in the month of August 2006. As her in-laws also travelled with them much cruelty was perpetrated on her. It is also alleged that the divorce petition, which was filed, was also one of the modes of defrauding her.

4. It is the say of the petitioner No.1 that both his parents had been arrested by the police authority on 25.01.2010 and later on, granted bail on account of their old age. This is the complaint which is preferred only to harass the petitioners as an afterthought to get more share in the property. It is further alleged that the respondent No.2 filed a Regular Civil Suit No. 32 of 2010 against petitioner No.1 through the power of attorney holder where she has sought share in the properties owned by the petitioner at Vadodara.

5. For and on behalf of the respondent No.2, an affidavit in reply is filed by Shri Balkrishna Jayantilal Mehta, the father of respondent No.2, who has urged that all details given in the complaint are true. The petitioner has not come with clean hands. On the ground of infertility, a conspiracy was made to take her to USA eventually to get her divorced. They being Hindu, there was no question of getting such divorce decree from the Court aboard. They are the persons with Indian origin having status of NRI and this petition does not deserve to be entertained. It is agreed by the respondent No.2 that the civil suit has been preferred in permanent injunction and declaration before the Senior Civil Judge Court and the suit is ordered to be proceeded under Order 9 Rule 6 of the Code of Civil Procedure. According to her, charge sheet is already filed and hence, invocation of extraordinary powers is not desirable.

6. Learned advocate Mr. Devang Chhatrapati for Mr. Nilesh Pandya appearing for the petitioners have been heard at length. Learned advocate Ms. Nayna Panchal representing respondent No.2 also made her detailed submissions. The State is represented by the learned AGP Ms. Shah. Both the sides have also presented decisions to substantiate their oral submissions which shall be referred to at an appropriate stage.

7. Upon hearing both the sides and considering the material on the record, at the outset, it is needed to be noted that the decree of divorce was passed by the Court at New Jercey in the month of September 2009. The present complaint came to be lodged in January 2010 against the petitioner No.1 and his parents petitioner No.2 and 3 respectively. It is also to be noted that for the first time, while filing the affidavit in reply, a dispute is raised with regard to the jurisdiction of the New Jercey Court in granting the decree of divorce. Otherwise there is no substantive petition pending either before the USA Court or before the competent Court in India challenging such decree. All consequential benefits awarded while passing such decree in terms of the alimony granted for the period of four years and other orders according to the petitioner have been duly complied with. Although, to this compliance has been disputed but there does not appear to be any serious challenge to the same before any competent forum.

8. In light of these facts and circumstances, filing of the present complaint after the decree of the divorce and also the pendency of the civil litigation between the parties shall need to be examined closely while considering as to whether this is a fit case for

exercising the extraordinary powers provided under Section 482 of the Code of Criminal Procedure.

9. This Court is conscious of the fact that such powers are to be exercised sparingly as the parties have other efficacious and alternative remedy available to them, if the offence is prima facie made out against the appellants. The question that would arise as to under which conditions discretionary jurisdiction under Section 482 requires to be exercised. The Apex Court in case of ***Harmanpreet Singh Ahluwalia and ors vs. State of Punjab and ors*** reported in ***(2009) 7 SCC 712*** has dealtwith the case where spouses were married in India but settled in Canada. Due to matrimonial differences, they lived separately and the divorce petition was also preferred. The father of the wife lodged a complaint against the husband under Sections 406 and 420 of IPC alleging that for the purpose of getting entry in Canada and to get settled there, the marriage was performed. The Apex Court, after discussing various decisions including that of ***State of Haryana vs. Bhajanlal reported in 1992 Supp (1) SCC 335*** and other decisions took a holistic view of the provisions and came to the conclusion that to invoke the inherent jurisdiction it was obligatory on the part of the High Court to exercise its discretion under Section 482. It is reiterated by the Court as to under which

circumstances and conditions such powers are to be exercised. It would be worthwhile to reproduce para 17 and 18 at this stage:

17. In the aforesaid judgment, this Court was considering a case of quashing of a criminal proceeding for commission of offence punishable under Section 465, 468, 471 and 420 read with Section 120B of the IPC. Respondents therein were excise officials. This Court held:

"9. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. 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. {See: Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305] and Raghubir Saran (Dr) v. State of Bihar [AIR 1964 SC 1]}. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the

complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings."

18. Recently in R. Kalyani vs. Janak C. Mehta & Ors. [(2009) 1 SCC 516], this Court opined:

"15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not

look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. 16. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

10. As can be noted from the material on the record that the allegations made in the complaint itself are essentially for the period between 2006 and 2010. Admittedly, from the year 2006, the spouses are residing in USA. According to the petitioner, they migrated to USA in the year 1997. However considering the version of the respondent-wife, they shifted abroad in the year 2004. Then also, the allegations which have been made are during the period when they were at USA.

11. It is also to be noted that she is alleged of not having legal competence to defend the case of divorce at USA and in the same breath as stated that she was provided the legal aid assistance by the Court of USA. It appears clearly from the averments made in the complaint so also from the chronological events that the criminal complaint lodged by the respondent No.2 is an afterthought. There may be property disputes still pending between the parties or the respondent No.2 might have contemplated the civil litigation in respect of some of the properties, division of which was not finalized by in between the parties. The civil suit pending before the Court being the Regular Civil Suit No. 32 of 2010 is also vindictive of such fact. That aspect nevertheless by itself would not give rise to quashment of the criminal complaint which was preferred by her.

12. Every criminal case is required to be considered on its own merits. Complaint if is found unjustifiable or vexatious, the same would be required to be interfered with. Facts here do not appear hazy or incomplete. It would not required to analyze or assess the material to deduce that the complaint cannot be proceeded with. It is apparent from the record on mere reading that the civil dispute is the central focal point. However, while protecting her

civil rights by way of suit, allegations are made to give criminal colour to the facts. Although the respondent and petitioner No.1 reside separately, having separate bank accounts in USA, all allegations pertain to the period between 2006 to 2010 where in fact they were governed by decree of divorce. Again there is no explanation of such late filing of complaint as well. Courts need to act with care and caution adopting pragmatic approach while dealing with matrimonial disputes.

13. This Court in case of ***Narendrasinh Ramuji Vaghela and ors vs. State of Gujarat and anr*** on 13.11.2014 rendered the judgement in Criminal Misc. Application No. 10161 of 2014 and has extensively dealt with this issue while quashing the complaint filed under Section 498A of IPC, relying on the decisions of the Apex Court. Some of the relevant findings and observations made therein require reproduction at this juncture profitably:

"22. In Preeti Gupta Vs. State of Jharkhand, reported in 2010 Criminal Law Journal 4303(1), the Supreme Court observed the following:

28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of

the society.

29. The courts are receiving a large number of cases emanating from section 498A of the Indian Penal Code which reads as under :

"498A. Husband or relative of husband of a woman subjecting her to cruelty.Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.For the purposes of this section, 'cruelty' means :

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

30. It is a matter of common experience that most of these complaints under section 498A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

31.The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that

human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. 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. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all

concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law.It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society."

23. In the aforesaid context, it will also be profitable to quote a very recent pronouncement of the Supreme Court in the case of Arnesh Kumar Vs. State of Bihar, Criminal Appeal No. 1277 of 2014, decided on 2nd July, 2014. In the said case, the petitioner, apprehending arrest in a case under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961, prayed for anticipatory bail before the Supreme Court, having failed to obtain the same from the High Court. In that context, the observations made by the Supreme Court in paras 6, 7 and 8 are worth taking note of. They are reproduced below:"

6. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498A is a cognizable and nonbailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs

shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of chargesheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

7. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

8. *Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is nonbailable and cognizable and therefore,*

lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short 'Cr.PC), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. ...."

24. *In the case of Geeta Mehrotra and anr. Vs. State of U.P. Reported in AIR 2013, SC 181, the Supreme Court observed as under:"*

19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

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 vs. L.H.V. Prasad & Ors. reported in (2000) 3 SCC 693 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 & Ors. vs. State of Haryana & 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."

14. This complaint also deserves to be quashed for having been preferred purely as an afterthought possibly with a view to to enhance the bargaining capacity after the decree of divorce and this is further being vindicated by the fact that till date such decree is not being challenged before any competent Court.

15. While quashing the complaint it is being clarified that nothing has been opined on the decree of divorce passed by the Court of New Jercey if at all at any point of time in the future either side chooses to challenge the same before the competent forum.

16. Accordingly, complaint being I C.R.No. 48 of 2010 registered with Makarpura Police Station is quashed with all consequential proceedings. Needless to say that none of the findings and the observations made in this order shall in any manner, affect the right of the parties in the civil proceedings pending before the Competent Court.

17. Rule is made absolute to the aforesaid extent.

(MS SONIA GOKANI, J.)

Jyoti