

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION NO. 7971 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE A.C. RAO**

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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 or any order made thereunder ?	

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ANSAARI ASHFAQ HUSAIN M. SIDDIQ &amp; 1 other(s)

Versus

STATE OF GUJARAT &amp; 1 other(s)

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Appearance:

MR HARDIK A DAVE(3764) for the Applicant(s) No. 1,2

NOTICE SERVED(4) for the Respondent(s) No. 2

MS CM SHAH, ADDL. PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR.JUSTICE A.C. RAO****Date : 28/02/2020****CAV JUDGMENT**

1. This writ application is directed against the complaint registered against the petitioner *vide* I-C.R.No.69 of 2015 by the complainant viz. Parulba @ Chandni Virendrasinh Jadeja for the

offences punishable under Sections 376, 506(2) and 114 of the Indian Penal Code.

2. It is alleged in the FIR that the Respondent No.2 – original complainant and original accused No.1 were in love relationship with each other since 1 ½ years. The accused No.1 had promised the complainant to get married but the complainant came to know that original accused no.1 is already married and having two children. Accused No.1 told her that he would get divorce for getting married with the complainant but he had not fulfilled his promise. The complainant had filed application before Mahila Cell Crime Branch. It is alleged that she had withdrawn the application as she was threatened by writ applicants no.1 and 2, who are father and brother of Accused No.1. So the applicants had challenged the said FIR and all proceedings thereto qua the applicants.

3. At the time of hearing of this application, it is contended that the applicants are father and brother of accused no.1 and there is no allegation under Section 376 of the Indian Penal Code but they are being father and brother of Accused No.1 they are falsely roped into the offence. It is contended that allegations of threat for withdrawal of the application is improbable and unbelievable. It is

contended that there is no allegation worth the name against the applicant except the threat. It is contended that mere insistence of word used in section without there being any allegation does not constitute any offence. To substantiate this submission, the learned advocate for the applicant has relied on the decision rendered in the case of ***Amitabh Adhar vs. NCT of Delhi*** reported in **2000 CRI.L.J. 4772** wherein it is held that the complainant had sent the written complaint to DCP (C), Women Cell levelling the charges against her husband. The petition was filed before the Delhi High Court against the step-brother and step-sister of the husband of the complainant. The High Court has found that the charges against the petitioner no.2 were wrongly levelled that too without any ground. It is observed that “... *it is well known that an estranged wife will go to any extent to rope in as many relations of the husband as possible in a desperate effort to salvage whatever remains of an estranged marriage.*” Accordingly, that petition qua stepbrother and sister was discharged by the High Court. It is contended that allegations against the petitioner are general in nature and no specific allegation is made against the petitioner in FIR. So it is gross abuse of process of law and, therefore, the present application needs to be allowed and the FIR against the applicants

requires to be quashed and set aside.

4. *Per contra*, the learned Additional Public Prosecutor has contended that it appears that from the statement given by the complainant to the Police Sub Inspector of Mahila Cell that she had withdrawn her complaint but the said withdrawal was due to threat by the petitioner. It is contended that the judgment referred to by learned advocate for the applicant is not applicable to the facts of the present case. It is contended that intimidation given by the applicant was acted upon the complainant so it cannot be said that merely allegations do not constitute the alleged offence.

5. The Apex Court, in the case of ***State of Haryana v. Bhajanlal*** reported in ***1992 Suppl (1) 335*** laid down the following guidelines for exercise of powers under Section 482 of the Cr.P.C. :

“ (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 non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 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.”

6. It is needless to say that Section 482 of the Code of Criminal Procedure empowers the High Court to exercise inherent powers to prevent the abuse of process of Court. In the proceedings institute on criminal complaint, Court exercises inherent powers only in a case where the complaint does not disclose any offence or is found to be frivolous. If the allegations levelled in the complaint do not constitute offences of which cognizance is taken by the learned Magistrate, it is open for the High Court to quash the same exercising inherent powers conferred under Section 482 of the Code of Criminal Procedure. In the case on hand, considering the allegations made in the complaint, it appears that the FIR discloses the ingredients of offence and there is no material to show that complaint is *mala fide* or frivolous or innocuous. Therefore, it would not be justifiable to exercise the powers under Section 482 of the Code of Criminal Procedure nor to interfere with the complaint itself as well. The case of the applicant is not covered with the above replied guidelines of the Apex Court and therefore

also it it would not be justifiable to exercise the powers as sought for.

7. For the reasons stated hereinabove, the present application is dismissed. *Interim relief* granted earlier shall stand vacated. Investigating Agency is free to investigate further. It is expected that the trial court should decide the case without being influenced by the observations made by this Court, as they are *prima facie* in nature. Rule is discharged.

**(A. C. RAO, J)**

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