

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 19837 of 2013**

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ASHWINBHAI DAHYABHAI SOLANKI (Petition disposed of) & 4 other(s)
Versus
STATE OF GUJARAT & 1 other(s)

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Appearance:

DELETED for the Applicant(s) No. 1
MR Y J PATEL(3985) for the Applicant(s) No. 2,3,4,5
HCLS COMMITTEE(4998) for the Respondent(s) No. 2
MR PV PATADIYA(5924) for the Respondent(s) No. 2
MR LB DABHI, APP for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 30/06/2023

ORAL ORDER

1. By this application, under Section 482 of the code of Criminal Procedure, 1973 the applicant seeks to invoke the inherent powers of this Court, praying for quashing of the First Information Report being, C.R. No.II-3057 of 2013 registered with Dasada Police Station, Surendranagar for the offence punishable under Sections 323, 498A, 504, 506(2), read with Section 114 of the the Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act.

2. Heard Mr.Y.J. Patel, learned advocate for the

applicants, L.B. Dabhi, learned APP for the respondent-State and Mr.P.V. Patadiya, learned advocate for respondent No.2.

3. Learned advocate for the applicants had not pressed the application qua applicant- Aswhinbhai Dayabhai Solanki. Hence, the application qua the applicant No.1 stands disposed of as not pressed vide order dated 27th March, 2014. Respondent No.2 happens to be wife of Aswhinbhai Dayabhai Solanki. Applicant Nos.2 and 3 happen to be father-in-law and mother-in-law of complainant while applicant Nos.4 and 5 happen to be sisters-in-law of the complainant. The complainant has filed a complaint against the husband, father-in-law, mother-in-law and two sisters-in-law under Sections 323, 498A, 504, 506(2), read with Section 114 of the the Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act before Dasada Police Station, Surendranagar. The complaint is produced at Annexure-A to the application.

4. Having heard the learned advocates for the respective parties and having gone through the complaint filed by the complainant which is produced at Annexure-A, it appears that applicant Nos.2 and 3 father-in-law and mother-in-law were are residing separately and the complainant was married eight years prior to the filing of the complaint. Respondent Nos.3 and 5 happen to be sisters-in-law both were residing separately. If uncontroverted allegations are accepted as it is, then it appears that due to some differences, respondent No.2 original complainant was residing at her parental home. As per the allegations leveled in the complaint against the accused, it appears that 20 days prior to the filing of the complaint, the accused persons came to her parents' house and threatened to kill her and beat her and used derogatory words against her and except that, no charges have been levelled against the accused persons. It is even no whisper about the role attributed to the present applicant Nos.4 and 5, who happen to be sisters-in-law residing separately at the different villages. So far as the applicant Nos.2 and 3 are

concerned, they are very old and the only allegation leveled against them is that they had threatened the complainant 20 days prior to the filing of the complaint. Therefore, the complaint was filed 20 days after the threat was made and even uncontroverted allegations are accepted, then no case is made out against the applicants under Sections 323, 498A, 504, 506(2), read with Section 114 of the the Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act.

5. In the case of **Preeti Gupta versus State of Jharkhand**, reported in **2010 (3) GLH 258**, the supreme Court has held in para 30 and 35 as under:

“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.

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 & Justice to take appropriate steps in the larger interest of the society."

6. It is necessary to consider whether the power conferred by the High Court under section 482 of the Code of Criminal Procedure 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**.

7. In view of the above, it appears that the FIR does not reveal any of the ingredients of the alleged criminal offence and the case appears to be nothing but an abuse of process of law and lack of bona fide. I have no hesitation to hold that permitting continuance of criminal proceedings against applicants-accused would result in abuse of process of Court.

8. In the result, this application is allowed. The Complaint/F.I.R. being C.R. No.II-3057 of 2013 registered with Dasada Police Station, Surendranagar is hereby

ordered to be quashed and set aside qua the present applicants No.2 to 5. All further consequential proceedings pursuant thereto shall also stand terminated qua applicant No.2 to 5. Rule is made absolute.

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(HASMUKH D. SUTHAR,J)