

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 23210 of 2023**

RITU PRITAM ARORA
Versus
STATE OF GUJARAT & ANR.

Appearance:

MR MANAN V PATEL(8059) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MS ASMITA PATEL, ADDL. PUBLIC PROSECUTOR for the Respondent(s)
No. 1

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 29/02/2024

ORAL ORDER

[1.0] Learned advocate Mr. Chirag Shrimali states that he has instructions to appear on behalf of the original complainant and seeks permission to file his Vakalatnama, which is granted. Heard learned advocates for the respective parties.

[2.0] **RULE.** Learned advocates waive service of note of rule on behalf of the respective respondents.

[3.0] Considering the facts and circumstances of the case and since it is jointly stated at the Bar by learned advocates on both the sides that the dispute between the parties has been resolved amicably, this matter is taken up for final disposal forthwith.

[4.0] By way of this petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"), the

petitioner has prayed to quash and set aside the FIR being **CR No.11196003230543 of 2023 registered with Manjalpur Police Station, Vadodara City** for the offences punishable under Sections 504 and 506(2) of the Indian Penal Code, 1860 and to quash all other consequential proceedings arising therefrom.

[5.0] Learned advocates for the respective parties submitted that during the pendency of proceedings, the parties have settled the dispute amicably and pursuant to such mutual settlement, the original complainant has also filed an Affidavit dated 18.12.2023 which is taken on record. In the Affidavit, the original complainant has categorically stated that the dispute with the petitioner has been resolved amicably and that he has no objection, if the present proceedings are quashed and set aside since there is no surviving grievance between them.

[6.0] Going through the impugned FIR it appears that same has been filed by respondent No.2 who is husband of the petitioner wherein it is alleged that the accused wife used to abuse the complainant from her maternal home and threatened to file false cases against him. In this regard FIR came to be filed.

[7.0] It is necessary to consider whether the power conferred by the High Court under section 482 of the CrPC 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**.

[8.0] Having heard learned advocates on both the sides and considering the facts and circumstances of the case as also the principle laid down by the Apex Court in the cases of **(i) Gian Singh Vs. State of Punjab & Anr.**, reported in **(2012) 10 SCC 303**, **(ii) Madan Mohan Abbot Vs. State of Punjab**, reported in **(2008) 4 SCC 582**, **(iii) Nikhil Merchant Vs. Central Bureau of Investigation & Anr.**, reported in **2009 (1) GLH 31**, **(iv) Manoj Sharma Vs. State & Ors.**, reported in **2009 (1) GLH 190** and **(v) Narinder Singh & Ors. Vs. State of Punjab & Anr.** reported in **2014 (2) Crime 67 (SC)** as also considering the fact that impugned FIR is filed in connection with matrimonial dispute between husband and wife pursuant to which they have separated and taken divorce and therefore, complainant has filed

an affidavit of settlement which is annexed with the petition as Annexure-B and he affirms the fact of settlement and hence, in the opinion of this Court, the further continuation of criminal proceedings against the present petitioner in relation to the impugned FIR would cause unnecessary harassment to the petitioner. Further, the continuance of trial pursuant to the mutual settlement arrived at between the parties would be a futile exercise. Hence, to secure the ends of justice, it would be appropriate to quash and set aside the impugned FIR and all consequential proceedings initiated in pursuance thereof under Section 482 of the Cr.P.C..

[8.1] Further, insofar as present petitioner is concerned, allegations of offence punishable under Sections 504 and 506(2) of the IPC are also made. However, the Hon'ble Apex Court in the case of **Mohammad Wajid and Anr. v. State of U.P. and Ors.** reported in **2023 LiveLaw (SC) 624: 2023 INSC 683**, has held in paragraphs 15, 27 and 28 as follows:

"Indian Penal Code, 1860; Section 504 - Mere abuse, courtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant - In judging whether particular abusive language is attracted by Section 504, IPC, the court has to find out what, in the ordinary circumstances, would be the effect of the abusive

language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant. (Para 25- 26)

Indian Penal Code, 1860; Section 504 - One of the essential elements for constituting an offence under Section 504 of the IPC is that there should have been an act or conduct amounting to intentional insult. Where that act is the use of the abusive words, it is necessary to know what those words were in order to decide whether the use of those words amounted to intentional insult. In the absence of these words, it is not possible to decide whether the ingredient of intentional insult is present. (Para 28)

Indian Penal Code, 1860; Section 506 - Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant. (Para 27) 3 Interpretation of Statutes- All penal statutes are to be construed strictly - Court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the words. (Para 19- 21)"

[9.0] In the result, petition is allowed. The impugned FIR being **CR No.11196003230543 of 2023 registered with Manjalpur Police Station, Vadodara City** as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside *qua* the petitioner herein. If the petitioner are in jail, the jail authority concerned is directed to release the petitioner forthwith, if not required in connection with any other case. Rule is made absolute to the aforesaid extent only. Direct service is permitted.

(HASMUKH D. SUTHAR, J.)

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