

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET
ASIDE FIR/ORDER) NO. 14926 of 2016****With****R/CRIMINAL MISC. APPLICATION NO. 31353 of 2017****FOR APPROVAL AND SIGNATURE:
HONOURABLE MR.JUSTICE P. M. RAVAL**

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Approved for Reporting	Yes	No
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LAXMANBHAI RANCHHODBHAI RABARI & ORS.**Versus****STATE OF GUJARAT & ANR.**

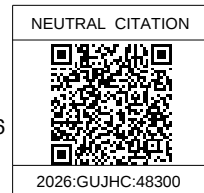
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Appearance:**MR HR PRAJAPATI(674) for the Applicant(s) No. 1,2,3****MR HARSH JOSHI for MR.HIREN M MODI(3732) for the
Respondent(s) No. 2****MR KM ANTANI, APP for the Respondent(s) No. 1**

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CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL**Date : 03/08/2026****ORAL JUDGMENT**

1. These applications under Section 482 of the Criminal Procedure Code, 1973 (the Code) are filed by the applicants



praying to quash and set aside the FIR being C.R. No. I-42 of 2016 dated 20.04.2016, registered with Borsad Town Police Station, District: Anand for the offences punishable under Sections 498A, 406, 420, 323, 506(2) and 114 of the Indian Penal Code, 1860 (IPC) and Sections 3 and 7 of the Dowry Prohibition Act.

2. Briefly stated the facts of the prosecution case are that marriage of the *de facto* complainant solemnized with original accused No. 1 – Nitinkumar Kanubhai Rabari on 29.01.2015 as per the Hindu rites and rituals at Borsad. At the time of marriage a huge *Kariyavar* was given to the *de facto* complainant. That, within 2-3 days of the marriage only, the original accused Nos. 2, 6, 7 and 8 approached the maternal uncle of the *de facto* complainant demanding Rs.10 lakh for the purpose of marriage of original accused No. 3 – brother-in-law of the *de facto* complainant with a promise to return the said amount on they being returned to America. The husband of the applicant (original accused No. 1) was residing in the USA in Boone city and after the marriage of his brother, he went to the USA on 11.02.2015. Original accused Nos. 2 to 5 also returned to America after 2-3 days and *de facto* complainant went to her maternal uncle's home and on getting Visa on 16.02.2016, went to the USA with original accused No. 2 on 18.02.2016, where, for about 6-7 days, she was kept well by the accused, however, thereafter, original accused Nos. 1 and 2 demanded Rs.25 lakh for the Hotel business and she was asked to bring money from her maternal uncle to which the *de facto*



complainant denied as earlier Rs.10 lakh, which was brought by her, were not returned and hence, she was allegedly started being subjected to cruelty, and physical and mental torture and harassment. Accused No. 1 - husband also gave fist and kick blows to her. Thereafter, allegedly, she was taken to an office where, after getting her signatures on some documents, she was taken to the Airport and sent back to India asking Rs.75,000/- towards tickets to be paid to the original accused No. 8 and thus, the accused persons, in connivance with each other, committed the offence in question, for which, the impugned FIR is filed.

3. Heard, learned advocate for the applicants, learned advocate for the respondent No. 2 - *de facto* complainant and the learned Additional Public Prosecutor for the respondent - State.

3.1 The learned advocate for the applicants would submit that marriage of the *de facto* complainant with the applicant No. 1 in Criminal Misc. Application No. 31353 of 2017 came to be solemnized on 29.01.2015. The husband left for the USA after the marriage on 11.02.2015 and that they, stayed in India together hardly for 10 to 15 days. It is further submitted that USA Visa for the *de facto* complainant was obtained on 16.02.2016 and hence, the mother of the applicant No. 1 - husband came to India to bring the *de facto* complainant and accordingly, on 18.02.2016, the *de facto* complainant along with her mother-in-law went to the USA on 06.03.2016.



3.2 The learned advocate for the applicants would further submit that divorce by consent between the applicant No. 1 – husband and the *de facto* complainant took place on 15.04.2016 and a statement was also made by her before the Boone Police Department to the effect that: *“11. Action taken: On 04/15/2016, I spoke with Maitry Rabari in the lobby of the Boone Police Department. She stated she was in an arranged marriage which was set up by her parents back in India. Once her husband found out that she had an affair before becoming married with him, this arranged marriage was annulled. She now has to return to India, according to her customs, to be with her original lover. However, her family members in India are threatening to perform an “Honor Killing” when she returns. I spoke to Ms. Rabari about not returning to India, and remaining here so that she is safe. I explained to her that I could not investigate, nor guarantee her safety if she returns to India. I also provided her with information to contact the Indian Consulate prior to returning to India, however, she was departing on 04/16/16 to return. Ms. Rabari wanted this report made as a record of her statement for her concern, pending any harm which may come to her once she returns to India. Ms. Rabari stated she intends on returning to India to be with her original lover.”* Thus, the learned advocate would argue that the *de facto* complainant had married with the applicant No. 1 – husband under the pressure of her maternal uncle and that, she had an affair and wanted to marry with him (her lover) and that, she also flagged her concern with regard to harm if she returns to India and had also desired to live with her



original lover. Accordingly, it is urged that since she came back to India on 16.04.2016 after obtaining divorce on 15.04.2016 and right thereafter, the present FIR is filed on 20.04.2016, which is nothing but a *mala fide* and abuse of process of law.

3.3 The learned advocate for the applicants would further submit that as per the divorce petition filed by the wife - *de facto* complainant, she clearly stated therein that: "*All matter regarding Equitable Distribution, Post separation Support, and Alimony have been resolved between the Parties in a manner that each deems fair and equitable, and neither Party is entitled to further relief*", and in the circumstances, lodging of present FIR is nothing but to save her skin from the undisclosed love affair she had, which fact was disclosed in her statement before the Boone Police Department on 15.04.2016, and the FIR in question is an afterthought.

3.4 Last but not the least, it is submitted that the *de facto* complainant has already remarried and residing in Australia.

3.5 Making above submissions, it is requested to allow this application.

4. *Conversely*, the learned advocate for the respondent No. 2 as well as the learned Additional Public Prosecutor for the respondent – State would submit that a bare reading of the FIR suggests that the accused firstly demanded a sum of Rs.10 lakh



and upon the said demand being fulfilled, another Rs.25 lakh were demanded and when the *de facto* complainant did not succumb the demand, the accused inflicted physical and mental cruelty and accordingly, a *prima facie* case is made out and hence, present applications seeking quashment of the FIR in question, may not be entertained at this stage.

4.1 It is submitted that surfing through the evidence, would amount to a mini trial and this Court, while considering an application for quashing under Section 482 of the Code, may not conduct a mini trial.

4.2 Making such submissions, it is urged by the learned Additional Public Prosecutor that this application may not be entertained and it is requested to be rejected.

5. Heard, the learned advocates for the parties present and perused the papers available on record.

5.1 At the outset, it would be apt to refer to a decision in case of *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604, wherein, the Hon'ble Apex Court crystallized seven distinct, illustrative categories of cases where judicial intervention under Section 482 of the Code or Article 226 of the Constitution is necessitated to secure the ends of justice and clip any abuse of the process of Court. The relevant portion of Paragraph 102 of the said judgment is extracted



below:

“(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 F.I.R. and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the code.

(3) Where, the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out the case against the accused.

(4) Where, the allegations in the F.I.R. 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 S.155(2) of the Code.

(5) Whether, the allegations made in the F.I.R. 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/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 malafide 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."

5.2 The applicants have preferred this application under Section 482 of the Code, seeking the quashing of the First Information Report (FIR) and all consequential proceeding in pursuance thereto. The allegations against the present applicants are physical and mental torture and harassment on the count of demand of dowry.

5.3 Before adverting to the case on hand, it would be appropriate to refer to a decision of the Apex Court in ***Preeti Gupta v. State of Jharkhand, 2010 (0) AIJEL-SC 48656***, wherein the Court held:

“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 498-A of the Indian Penal Code which reads as under:-

[“498-A. 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."]

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30. It is a matter of common experience that most of these complaints under Sec. 498-A IPC are led 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 led 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 led 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 Sec. 498-A 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 tranquility 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 led 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 & Justice to take appropriate steps in the larger interest of the society."

5.4 Further, in the decision in *Kahkashan Kausar @ Sonam v. State of Bihar, 2022 (0) AIJEL-SC 68351*, the Apex Court observed that:

"12. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives.

13. This Court in its judgment in *Rajesh Sharma and Ors. Vs. State of U.P. & Anr., (2018) 10 SCC 472* has observed:-

"14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be led under already referred to some of the statistics from the Crime Records Bureau. This



Court had earlier noticed the fact that most of such complaints are led in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement."

14. Previously, in the landmark judgment of this court in *Arnesh Kumar Vs. State of Bihar and Anr.*, (2014) 8 SCC 273 it was also observed:-

"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A 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 498-A IPC is a cognizable and non-bailable 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, bed-ridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested."

15. xxx

16. 16. In *Geeta Mehrotra & Anr. Vs. State of UP & Anr.*, (2012) 10 SCC 741 it was observed:-

*"21. 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."

17. Recently, in *K. Subba Rao v. The State of Telangana*, (2018) 14 SCC 452 it was also observed that:-

"6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore,

this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

5.5 Tested on the above observations in various pronouncements of the Apex Court, if the case on hand is adverted, following aspects emerge:

- a) the allegations against the applicants appear to be vague and omnibus;*
- b) the ingredients of the offences alleged are not satisfied qua the applicants inasmuch as, so far as offence punishable under Section 498A of the IPC is concerned, the complainant alleged that all accused harassed her mentally and physically but no specific and distinct allegations have been made against either of the applicants herein, i.e., none of the applicants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence;*
- c) furthermore, similar allegations of harassment and demand for dowry made in the FIR, however, without there being any specific instance;*
- d) it is trite that small and scattered incidents without any immediate proximity do not constitute offence of cruelty. Besides, while original accused No. 1 is the husband, the other are the relatives of the husband and some of whom are distant one;*
- e) so far as demand of Rs.10 lakh at the first instance and the de facto complainant also fulfilled the same is concerned, FIR itself narrates that it was borrowed for the purpose of marriage of the brother-in-law of the de facto complainant;*



- f) if the marriage span is seen, the same is hardly of 01 year, 03 months and 09 days;
- g) indisputably, the husband of the applicant returned to the USA on 11.02.2015 and the de facto complainant, upon having VISA, went to the USA on 06.03.2016;
- h) admittedly, the de facto complainant filed divorce petition at the USA only, before the concerned authority and divorce came to be granted on 15.04.2016 and she returned to the India on 18.04.2016 and thereafter, present FIR is filed on 20.04.2016;
- i) in the divorce petition, a specific averment has been made by the de facto complainant to the effect that, ***all matter regarding Equitable Distribution, Post separation Support, and Alimony have been resolved between the Parties in a manner that each deems fair and equitable, and neither Party is entitled to further relief;***
- j) further, her statement before the Police Department of Boone reveals that, ***“she was in an arranged marriage which was set up by her parents back in India. Once her husband found out that she had an affair before becoming married with him, this arranged marriage was annulled. She now has to return to India, according to her customs, to be with her original lover. However, her family members in India are threatening to perform an “Honor Killing” when she returns. I spoke to Ms. Rabari about not returning to India, and remaining here so that she is safe. I explained to her that I could not investigate, nor guarantee her safety if she returns to India. I also provided her with information to contact the Indian Consulate prior to returning to India, however, she was departing on 04/16/16 to return. Ms. Rabari wanted this report made as a record of her statement for her concern, pending any harm which may come to her once she returns to India. Ms. Rabari stated she intends on returning to India to be with her original lover”.*** Thus, it appears that it is clear case of love affair and with a view to save her from the rigor of social stigma and dilemma, she appears to have filed this FIR as an afterthought;



k) *it appears that since the de facto complainant wanted to live with her lover, which is clear from her statement before the concerned authority as aforesaid. Further, her averment in the divorce petition that all matters regarding **Equitable Distribution, Post separation Support, and Alimony** have been resolved between the parties, is suggestive of the fact of mala fide in filing the present FIR;*

l) *admittedly, the de facto complainant has remarried now and residing in Australia;*

m) *in K. Subba Rao v. The State of Telangana, (2018) 14 SCC 452, it is held that the Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."*

5.6 In view of the above, taking into consideration the facts and circumstances of the case *vis-a-vis* the aforesaid decisions of the Apex Court, this Court is of the considered opinion that the present case squarely falls within the parameters (1), (3), (5) and (7) as enshrined in the case of *Bhajan Lal (supra)* as the proceedings against the present applicants appear to be manifestly frivolous and instituted with *mala fide* and none of the ingredients of the offence alleged against the present applicants appear to be satisfied in the facts and circumstances of the case. Accordingly, the Court is inclined to exercise powers vested under Section 482 of the Code and quash the FIR *qua* the present applicants.

6. *In fine*, these applications succeed and are allowed,



accordingly. FIR being C.R. No. I-42 of 2016 dated 20.04.2016, registered with Borsad Town Police Station, District: Anand for the offences punishable under Sections 498A, 406, 420, 323, 506(2) and 114 of the Indian Penal Code, 1860 and Sections 3 and 7 of the Dowry Prohibition Act, along with all consequential proceedings emanating therefrom, is quashed and set aside *qua* the present applicants.

6.1 Rule is made absolute, accordingly. **Direct service** is permitted.

[P. M. Raval, J.]

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