IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1056 OF 2019

1. Iqbalmiya Ahmedmiya Shaikh,
Age : 66 yrs, Occu : Business
R/o: 8 Plot No. 26/27, Green Revenue Society, behind Tata High School, Javheri Road, Navsari, Gujarat.

2. Shoeb Iqbalmiya Shaikh
Age : 33 years, Occ: Service,
R/o: 2214, Sunflower Road, L1V2P8, Pickering Ontario, Canada.

3. Farzana w/o Iqbalmiya Shaikh
Age : Major, Occu: Household,
R/o: 2214, Sunflower Road, L1V2P8, Pickering Ontario, Canada,

4. Amarin Mohammad Junaid
Age : Major, Occu: Household
Osawa, Toronto, Canada

5. Taufiq Indawala
Age: Major, Occu: Business,
R/o Hope Tree, Scarbrow, Toronto

6. Imtiaz Indawala
Age : Major, Occu: Business,
R/o Hope Tree, Scarbrow, Toronto

7. Hafeez Idris
Age: 49 years, Occu: Business
R/o: Rangoon Nagar, Navsari, Gujarat

8. Hanifbhai Jamal Multani
Age: Major, Occu: Business
R/o: Plot No.1 & 2, Bhairav Nagar, Surat Navsari Main Road, Bhestan, Surat, Gujarat.

9. Mohammad Iqbal Abdul Hamid shaikh
Age: Major, Occu: Business

R/o. Pach Hatdi, Navsari, Gujarat ... Petitioners

Versus

1. The State of Maharashtra

2. Shaikh Zakir Hasan Abdul Hamid,
Age – 57 years, Business – Service,
R/o S.No. 325/2B, Plot No.2A,
Opp. CIV Society Ground,
Mukundnagar, Ahmednagar. ... Respondents

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Advocate for Petitioners : Shri D. M. Shinde h/f Shri R. S. Pawar
APP for Respondent No.1 – State : Shri S. J. Salgare
Advocate for Respondent No.2 : Shri Shaikh M. A. Jahagirdar

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CORAM : RAVINDRA V. GHUGE AND
B. U. DEBADWAR, JJ.

DATE : 24TH MARCH, 2021

ORAL JUDGMENT [PER RAVINDRA V. GHUGE] :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners are the original accused who have preferred this petition under Article 226 of the Constitution of Indian and Section 482 of the Code of Criminal Procedure, seeking quashing of the FIR bearing Crime No. I-382 of 2018 dated 31-10-2018, registered at Camp Police Station, Bhingar, Ahmednagar.

3. We have considered the strenuous submissions of the

learned advocate for the petitioners / accused, the learned prosecutor on behalf of respondent No.1 – State and the learned advocate appearing on behalf of respondent No.2, original informant.

4. Respondent No.2 is the father of a married daughter, who is allegedly the victim. Petitioner No.2 is her husband. Petitioner Nos. 1 and 3 are the parents-in-law of the victim. Petitioner No.4 is the married sister of petitioner No.2. Petitioner Nos. 5 and 6 are attesting witnesses to a divorce decree, allegedly executed by petitioner No.2 from Ontario, Canada. Petitioner Nos. 6, 7, 8 and 9 are the persons who, though unconnected with the victim, are alleged to have threatened the informant (father of the victim) and are also alleged to have defrauded him by extending assurances of payment of large amounts for granting divorce to the husband, petitioner No.2.

5. We have carefully gone through the FIR, which is in *Marathi*, threadbare. We have also noted that after the charge-sheet was tendered before the learned Chief Judicial Magistrate, Ahmednagar on 31-08-2020, R.C.C. No. 591 of 2020 has been proceeded with and the trial has already commenced. Sections 498-A, 504, 506, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code have been invoked in the crime at the behest of the informant.

6. Practically, in all matters under Section 482 of the Code of Criminal Procedure, 1973, the accused approaches the Court on the ground that the First Information Report (F.I.R.), on the face of it, does not disclose ingredients that would constitute a cognizable offence. Thus, the inherent power of the High Court, in it's jurisdiction under Section 482, is invoked for seeking the quashing of the F.I.R..

7. In ***C.B.I. vs. Tapan Kumar Singh, (2003) 6 SCC 175 : AIR 2003 SC 4140***, the Honourable Supreme Court has held in paragraph 22 that "*The law does not require the mentioning of all the ingredients of the offence in the FIR. It is only after completion of the investigation that it may be possible to say whether any offence is made out on the basis of the evidence collected by the investigating agency.*" It is observed that an FIR is not an encyclopedia which must disclose all the facts and details relating to the offence alleged to have been committed. It requires no debate that an FIR is merely a report by the informant about the commission of a cognizable offence and it cannot be ruled out that minute details may not be mentioned. It cannot be ignored that an FIR pertains to an offence, which is alleged to have been committed and the informant, in a disturbed state of mind and shaken on account of a serious offence committed, approaches a police station for recording an FIR.

8. In the ***State of Punjab vs. Dharam Singh, 1987 SCC (Cri.) 621 : 1987 Supp. SCC 89***, the Honourable Supreme Court held that the High Court had erred in quashing the FIR by going beyond the averments, to consider the merits of the case even before the investigating agency has embarked upon the legal exercise of collecting evidence.

9. In ***Kurukshetra University vs. State of Haryana, (1977) 4 SCC 451 : AIR 1977 SC 2229 (a Three Judges Bench)***, the Honourable Supreme Court has observed thus:-

> *"It surprises in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482, Criminal Procedure Code, it could quash an FIR. The Police had not even commenced investigation into the complaint filed by the warden of the University and no proceeding at all was pending in any Court in pursuance of the FIR. It ought to be realized that inherent powers do not confer any arbitrary jurisdiction on the High Court to act according to its whim or caprice."*

10. In ***Geeta Mehrotra and another vs. State of Uttar Pradesh and another, (2012) 10 SCC 741***, the Honourable Supreme Court has held that in the absence of any specific allegation and an FIR, prima facie, indicating no case against the co-accused, the Court would have the power to quash an FIR.

11. In ***Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others vs. State of Gujarat and another, (2017)***

9 SCC 641, the Honourable Supreme Court has laid down the guiding principles to be considered in determining whether an FIR could be quashed, as under:-

> *"(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.*
>
> *(2) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.*
>
> *(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.*
>
> *(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court.*
>
> *(5) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.*
>
> *(6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such*

offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

(7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.

(8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

(9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(9) There is yet an exception to the principle set out in propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

12. In view of the reports referred to hereinabove, it is apparent that the Hon'ble Apex Court has crystalised the law that the High Court is not expected to assess the merits of the pieces of the evidence available post investigation, for considering whether the FIR would ultimately lead to the conviction of the accused or not. The settled position of law is that the FIR must make out an offence against a particular accused. If narration of the grievances

of the informant indicate that they could amount to offences committed by the accused under certain provisions of the Indian Penal Code or any other enactment that has been invoked in the FIR, this Court is not expected to interfere with the FIR.

13. As has been informed to us that, the trial has already commenced, we would, therefore, refrain from making any observations about the narration of offences by the informant in the FIR, so as to avoid prejudice to any of the litigating sides. Suffice it to say that, while considering this case under Section 482 of the Code of Criminal Procedure, we do find specific allegations against petitioner Nos. 1 to 3 and 7 to 9. The informant has narrated the manner in which petitioner Nos. 1 to 3 have tortured the daughter of the informant after her marriage with petitioner No.2. So also, the informant has narrated the instances in the FIR indicating the commission of an offence of defrauding / committing a fraud, on the informant, by petitioner Nos. 1 to 3 and 7 to 9. We, therefore, find that an offence can be made out based on the contents of the FIR as against these petitioners.

14. In so far as petitioner No.4 is concerned, she is the sister of petitioner No.2 and therefore, the sister-in-law of the wife of petitioner No.2. It is specifically mentioned in the FIR that after marriage, the victim was treated well initially for a few months. Before her ill-treatment began, petitioner No.4 had traveled with

petitioner No.1 to Canada along with her other sisters. The victim, along with her husband and mother-in-law, resided at Navsari in the State of Gujarat, where the mother-in-law and the husband are alleged to have mentally and physically harassed her. After sometime, the husband took the victim and his mother and joined his father at Canada. There again, the victim was mentally and physically tortured. However, there are no allegations against petitioner No.4, after the victim reached Canada along with her husband and mother-in-law. The marriage has taken place as per the Islamic Shariyat on 21-08-2013. In the statement of the victim, recorded under Section 161 of the Code of Criminal Procedure, she submits that all the sisters of her husband left for Canada within 15 days of the marriage. Petitioner No.4 is one of the said sisters. It is the version of the victim that the marriage was in bliss for the initial few months. The father-in-law who was at Canada was also alleged to have harassed the victim, there. In the absence of any specific statement about petitioner No.4, we do not find that any offence has been made out against her.

15. Similarly, petitioner No.5 and 6 are said to be witnesses to a divorce deed which is allegedly executed by the husband from Toronto in Canada on 24-12-2015.

16. Petitioner Nos. 5 and 6 have, therefore, merely signed

as witnesses in the presence of a public notary by name Rameshbhai S. Patel situated at Toronto, Canada. The FIR does not reveal any specific act committed by these two witnesses, except a statement by the informant that they are party to the fraudulent deed of divorce. We are of the view that these two witnesses are merely attesting witnesses, since the rules applicable in Toronto, Canada may have required the executant of the deed to bring forth two witnesses to identify him. *Prima facie*, we do not find that these two persons could be said to be party to a fraud, allegedly committed by the husband and the parents-in-law, on the victim.

17. In so far as petitioner Nos. 7, 8 and 9 are concerned, the informant had identified petitioner No.7, as set out in the FIR, who had made false promises on behalf of the husband and the parents-in-law of the victim of ensuring payment of Rs.25,00,000/- as permanent alimony. Based on several statements which are found in the FIR, petitioner No.7 is said to have made the informant believe that the divorce could be approved by consent and the daughter of the informant would be paid Rs.25,00,000/- as permanent alimony. These promises turned out to be empty assurances / false assurances. In one incident, two unidentified persons along with petitioner No.7 have abused the informant and have threatened him with dire consequences. In the investigation, it was noticed that these two persons were petitioner Nos. 8 and 9.

18. In view of the above, this petition is partly allowed, in terms of prayer clause (B), only to the extent of petitioner Nos. 4, 5 and 6. Rule is made partly absolute accordingly. This petition is dismissed to the extent of petitioner Nos. 1 to 3 and 7 to 9. Rule is discharged accordingly.

(B. U. DEBADWAR, J.) **(RAVINDRA V. GHUGE, J.)**

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