

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 3205 of 2024**

PUNJABHAI KARSANBHAI BARAD/AAHIR

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR PRATIK Y JASANI(5325) for the Applicant(s) No. 1

MR MANAN MAHETA, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 03/07/2025****ORAL ORDER**

[1.0] By way of present petition under Article 226 of the Constitution of India read with Section 528 of the BNSS, the petitioner has prayed to quash and set aside the FIR being **CR No.11208035231110 of 2023 registered with Gandhigram Police Station, Rajkot City** for the offence punishable under Sections 323, 506(2) and 114 of the Indian Penal Code, 1860 (for short "IPC") filed at the instance of respondent No.2.

[2.0] Perusing the impugned FIR, it appears that the present petitioner is shown as accused while in column No.12 of the body of the FIR, name of petitioner is mentioned as complainant. After the investigation, charge-sheet is filed wherein it is stated that at the instance of Mahilapalsinh complaint is filed and charge-sheet is filed against the petitioner for the offences punishable under Sections 323, 506(2) and 114 of the IPC. There is a stark contrast between the allegations leveled in the FIR dated 01.12.2023 and the charge-sheet dated 19.01.2024 filed after the investigation.

[3.0] Upon instructions, learned APP has fairly submitted that due to inadvertence error has crept while recording the online FIR but no any order has been obtained from the competent authority and thereafter based on the said FIR, investigation was carried out. It is true that FIR itself is neither *be-all and end-all* nor an encyclopedia but no any steps have been taken to correct the said error and straightway in connection of the said offence, investigation was carried out and charge-sheet is filed. As non-cognizable offence is committed under Section 323 of the IPC and no allegation is made out under Section 506(2) of the IPC as no any threat or dire consequence administered as the petitioner himself on the same day approached the police authority and lodged the complaint and one cross-complaint is also filed, considering the complexity of the allegation and the counter allegation and investigation is not in tune with the FIR filed at Annexure-A and considering the fact that even the investigation is carried out in absence of permission under Section 155(2) of the CrPC, to continue such proceeding would be nothing but abuse of process of law.

[4.0] It is necessary to consider whether the power conferred by the High Court under section 482 of the CrPC (section 528 of the BNSS) is warranted. It is true that the powers under Section 482 of the CrPC (section 528 of the BNSS) 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** and in case of **State of Haryana v. Bhajan Lal**, reported in **1992 Supp (1) SCC 335**, the Apex Court has set out the categories of cases in which the inherent power under Section 482 CrPC can be exercised and held in para 102 as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Art. 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :

(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.”

[5.0] In view of above, present petition deserves to be allowed as discussed in earlier part and the proceedings deserve to be quashed and set aside.

[6.0] In the result, the petition is **allowed**. The impugned FIR being **CR No.11208035231110 of 2023 registered with Gandhigram Police Station, Rajkot City** as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside *qua* the present petitioner. Rule is made absolute accordingly. Direct service is permitted.

(HASMUKH D. SUTHAR, J.)

Ajay