

HIGH COURT OF GUJARAT**Bench: Honourable Mr. Justice Vimal K. Vyas****Date of Decision: 19th January 2024**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 4145 of 2022**CHINTAN KANJIBHAI KALATHIYA (CHINTANBHAI KANJIBHAI @
KANUBHAI GADHALI)****Versus****STATE OF GUJARAT****Legislation:**

Article 226 of the Constitution of India

Section 482 of the Code of Criminal Procedure, 1973 (CrPC)

Section 306 of the Indian Penal Code

Subject: Application for quashing FIR registered under Section 306 IPC for abetment of suicide, based on allegations of harassment and pressure by the applicant leading to the deceased's suicide.**Headnotes:**

Quashing of FIR – Section 306 IPC – Abetment of Suicide - Application under Article 226 and Section 482 CrPC for quashing FIR alleging abetment of suicide – FIR lodged by deceased's wife against applicant for harassment and pressurizing deceased, leading to his suicide – Allegations in FIR constituting cognizable offence under Section 306 IPC. [Paras 1, 2, 12]

Delay in Filing Complaint – Impact on Credibility of FIR - FIR lodged after an 8-day delay – Applicant's contention that delay raises doubt over allegations – Respondent's explanation of delay due to wife's shock and depression – Court finds no unusual delay affecting FIR's credibility. [Paras 7, 10]

Ingredients of Abetment – Analysis of FIR Allegations - Court’s examination of FIR allegations against requirements of Sections 107 and 306 IPC – Determination that FIR discloses prima facie case of abetment of suicide by applicant. [Paras 11, 12]

Suicide Note – Relevance in Establishing Abetment - Suicide note found on deceased implicating applicant in harassment and pressure – Note considered significant evidence in assessing abetment charge. [Para 13]

Court’s Power under Section 482 CrPC – Limitations in Quashing FIR - Court’s refusal to quash FIR under Section 482 CrPC – Observations on limited scope of judicial intervention at FIR stage – Importance of not impeding police investigation or trial process. [Paras 14, 19]

Judicial Precedents – Guiding Principles for Quashing of FIR - Reference to Apex Court judgments outlining principles for exercise of power under Section 482 CrPC – Emphasis on allowing police investigation in cases where FIR discloses cognizable offence. [Paras 16-19]

Decision – Application Dismissed, FIR Upheld – The application for quashing the FIR dismissed due to the prima facie establishment of offence under Section 306 IPC – Rule discharged and interim relief vacated. [Para 20-21]

Referred Cases:

- Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others, reported in AIR 2021 SC 1918
- State of Maharashtra vs. Arun Gulab Gawali, reported in (2010) 9 SCC 701
- Central Bureau of Investigation vs. Aryan Singh etc., reported in 2023 SCC Online SC 379

Representing Advocates:

Mr. Hardik B Koradiya for the Applicant(s)

Ms. Chetna M. Shah, APP for the Respondent(s)

ORAL JUDGMENT

1. By preferring the present application under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short, the 'CrPC'), the applicant has prayed to quash and set-aside the complaint being CR No.11198067220071 of 2022 registered with the Vartej Police Station, Bhavnagar, for the offence punishable under Section 306 of the Indian Penal Code.

2. The brief facts of the present case are as under :
 - (i) That the deceased Vanrajbhai Nanjibhai Rathod had borrowed some amount from the present applicant, for which the applicant was charging heavy interest at the rate of 10%. As the applicant was continuously harassing and tremendously pressurizing the deceased to repay the amount by giving him threats, the deceased, on 24.1.2022, committed suicide by hanging himself in the room of his friend one Arvindbhai @ Mitthun Vallabhbhai Jadav. During the postmortem, the medical officer found a suicide note from the pocket of the shirt of the deceased, in which, the deceased has specifically stated that he had borrowed some amount from Chintan Kaku Gadhali (present applicant) at the rate of 10% and the applicant was harassing and pressurizing him by giving him threats. The deceased has specifically stated in the suicide note that the applicant is a headstrong person and can do anything. Lastly, the deceased has requested to take care of his children.

 - (ii) On 1.2.2022, the wife of the deceased, namely, Sitaben, lodged the complaint against the present applicant at the Vartej Police Station, Bhavnagar. Therefore, the offence was registered against the applicant vide FIR being CR No.11198067220071 of 2022 for the offence punishable under Section 306 of the Indian Penal Code.

 - (iii) On the strength of the FIR, the investigation commenced. On 14.2.2022, the applicant approached this Court by preferring the present application with a prayer to quash and set-aside the aforesaid FIR registered against him at the Vartej Police Station, Bhavnagar, mainly on the ground that he has been falsely implicated in the alleged offence and the complaint, even if considered as it is, does not disclose the commission of offence of abetment of suicide

as the allegations contained in the FIR are false and insufficient to meet with the concomitants of Section 306 of the Indian Penal Code.

3. On 22.3.2022, a Coordinate Bench of this Court (Coram :

Vipul M.Pancholi, J.), passed the following order :

“Heard learned advocate, Mr. Hardik Koradiya for the applicant.

Learned advocate submitted that the ingredients of the alleged offence punishable under Section 306 of the IPC are prima facie not made out and the impugned FIR is nothing but a gross abuse of the process of the Court.

In view of the above, issue Notice returnable on 28th July, 2022.

Learned APP waives service of notice for respondent – State of Gujarat.

Till next date of hearing, it is open for the Investigating Agency to proceed further with the investigation, however, the chargesheet shall not be filed against the present applicant without prior permission of this Court.”

4. The aforesaid interim order granted by this Court has been extended from time to time.
5. Heard Mr.Hardik Koradiya, learned advocate for the applicant and Ms.Chetna Shah, learned APP for respondent – State.
6. At the outset, it would be note-worthy that the present applicant is enlarged on anticipatory bail by a Coordinate Bench of this Court vide order dated 25.2.2022 passed in Criminal Misc. Application No.4440 of 2022.
7. Learned advocate Mr.Hardik Koradiya, while drawing attention of this Court to the FIR of the alleged offence, has submitted that the impugned FIR is lodged by the complainant after a considerable delay of 8 days of the incident without any explanation thereof, which raises serious doubts about the allegations made in the complaint. It is submitted that the applicant never lent money to the deceased at the rate of 10% as alleged. On the contrary, as the deceased was in need of money, the applicant had taken loan of

Rs.1,46,000/- and paid to the deceased, which the deceased has not returned though demanded several times.

8. Mr.Koradiya, learned advocate for the applicant has further submitted that the allegations made in the FIR are vague, baseless, imaginary and general in nature. It is submitted that the present applicant is not even remotely connected with the alleged offence and, therefore, the allegations levelled in the FIR do not constitute the offence punishable under Section 306 of the Indian Penal Code. Considering the same, it is urged by him that the present application is required to be allowed as no *prima facie* case is made out against the present applicant.
9. Per contra, learned APP Ms.Chetna Shah for the respondent – State has vehemently opposed the present application and has submitted that on plain reading of the FIR, it transpires that the deceased committed suicide due to continuous harassment, torture and tremendous pressure by the applicant. It is submitted that at the time of performing the postmortem, the medical officer found a suicide note from the pocket of the shirt of the deceased, in which, the deceased has, by naming the present applicant, specifically stated that the present applicant was harassing and torturing him by giving threats to cause his death. The deceased has further specifically stated that the present applicant is a headstrong person and can do anything.
10. Learned APP Ms.Chetna Shah has further submitted that it is mentioned in the FIR itself that as the wife of the deceased was shocked and depressed due to the unfortunate incident, the complaint was filed late, which cannot be said as an unusual delay. It is submitted that the FIR and the suicide note clearly indicates the involvement of the present applicant in a serious offence, which requires a thorough investigation.
11. Learned APP has further submitted that the bare reading of the FIR suggests that the ingredients of Sections 107 and 306 of the Indian Penal Code are being attracted and as it discloses the commission of offence, the court should not exercise the power conferred to it by Section 482 of the CrPC.
12. Having heard learned advocates for the respective parties and having considered the impugned FIR, which is the only document placed on record

by the applicant, this Court is of the opinion that the allegations levelled in the FIR against the present applicant clearly disclose the cognizable offence. In other words, considering the allegations in the FIR, it cannot be said that, even if they are taken at their face value and accepted in their entirety, the same do not constitute the offence. On the contrary, the allegations made in the FIR clearly attract the ingredients of Sections 107 and 306 of the Indian Penal Code.

13. Section 306 deals with the abetment of suicide. The abetment is a mental process of instigating a person or intentionally assisting a person in carrying out an act. So, if anyone abets, entices or compels another person to commit suicide, the ingredients of Section 306 would be attracted. In light of the above legal position, the Court has to consider the facts of the present case. It is pertinent to note that in the case on hand, the complainant, who is the wife of the deceased, clearly stated in her complaint that the present applicant was continuously harassing and torturing the deceased by calling him on phone, due to which, her husband was remaining in great stress and gone into depression. It clearly transpires from the FIR that while performing the postmortem, the medical officer found the suicide note from the pocket of the shirt of the deceased, in which, the deceased has specifically mentioned that he has committed suicide due to continuous harassment and torture given by the present applicant. The complainant has identified the handwriting of the suicide note as that of her deceased husband.

14. In view of the above, in my considered opinion, there is sufficient ground for prosecuting against the present applicant as the allegations made in the FIR clearly disclose commission of offence under Section 306 of the Indian Penal Code. It is settled position of law that if the allegations contained in the FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial.

15. It is note worthy that the learned advocate Mr.Koradiya, though submitted that as the deceased was in need of money, with a view to help him, the applicant had taken a loan of Rs.1,46,000/- and paid it to the deceased, however, in support of this contention, nothing has been produced on record for

perusal of this Court. It, therefore, appears to be merely a verbal say.

16. At this juncture, it would be apposite to refer to certain case-laws of the Apex Court, wherein the Apex Court crystallized the position of law in a very crystal manner.

17. In the case of ***Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others, reported in AIR 2021 SC 1918***, while referring to the case of ***State of Maharashtra vs. Arun Gulab Gawali, reported in (2010) 9 SCC 701***, the Apex Court observed thus :

“In the case of Arun Gulab Gawali (supra), this Court set aside the order passed by the High Court quashing the criminal complaint/FIR which was even filed by the complainant. In the case before this Court, prayer for quashing the FIR before the High Court was by the complainant himself and the High Court quashed the FIR/complaint in exercise of the powers under Section 482 Cr.P.C. Quashing and setting aside the judgment and order passed by the High Court quashing the FIR, this Court in paragraph 13 and 27 to 29 has observed as under :

“13. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it “soft-pedal the course of justice” at a crucial stage of investigation/proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as “CrPC”) are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that stream of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these

powers. (Vide State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949], Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400], G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : AIR 2000 SC 754] and Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])

27. *****

28.

29.. ***** ”

18. Even, in the case of Central Bureau of Investigation vs. Aryan Singh etc., reported in 2023 SCC Online SC 379, the Apex Court has observed thus :

“At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider ‘whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not’.”

19. In the case of Neeharika Infrastructure Pvt. Ltd. (*supra*), while referring the various case-laws, the Apex Court has specifically held that :

“i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) Criminal proceedings ought not to be scuttled at the initial stage;*
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*
- ix) The functions of the judiciary and the police are complementary, not overlapping;*
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*
- xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary*

before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P.Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;"

20. In view of the above discussion and observation as well as considering the facts and circumstances of the case on hand, this Court is of the opinion that since a *prima facie* case is made out against the present applicant, this Court cannot invoke the powers conferred under the provisions of Section 482 of the CrPC to quash and set-aside the complaint being CR No.11198067220071 of 2022 registered with the Vartej Police Station, Bhavnagar, for the offence punishable under Section 306 of the Indian Penal Code.

21. In the overall view of the matter, the present application fails and is hereby dismissed. Rule discharged. Interim relief stands vacated.

After the pronouncement of the judgment, learned advocate for the applicant requested to stay the judgment. The request is not acceded to.

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