

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE  
FIR/ORDER) NO. 18238 of 2024**

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SHAILENDRA RAMESHBHAI GAMIT  
Versus  
STATE OF GUJARAT & ANR.

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**Appearance:**

MS KRUTI SHAH WITH MR JAY N SHAH(10668) for the  
Applicant(s) No. 1  
MS VRUNDA SHAH ADDITIONAL PUBLIC PROSECUTOR for the  
Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE NIRZAR S. DESAI**

**Date : 30/09/2024**

**ORAL ORDER**

1. Heard learned advocate Ms. Kruti Shah with  
learned advocate Mr. Jay N. Shah appearing for  
the petitioner. learned Additional Public  
Prosecutor Ms. Vrunda Shah appearing for the  
respondent - State and learned advocate Mr.  
Jaydeep Sindhi appearing for the respondent No.2  
- original complainant.

2. It is the case of the petitioner as canvassed by  
learned advocate Ms. Kruti Shah appearing for

the petitioner that the petitioner is a Doctor running a hospital at Vyara wherein the present complainant was serving in the Management Department since 2020. As per the FIR, the period of offence is from 1<sup>st</sup> June, 2021 to 30<sup>th</sup> April 2024. As stated in the FIR, by misusing his dominating position, the present petitioner in January 2023, for the first time, raped the complainant and thereafter, continuously repeated the said act forcibly. As per the FIR, from 20<sup>th</sup> March, 2023 to 3<sup>rd</sup> April 2024, there were Instagram chats took place between them in a very filthy language and all that was done without any consent by the complainant and the present petitioner used to send obscene video also to the complainant. However, as the complainant was serving in the management cadre of the hospital, her helplessness was misused by the present petitioner and therefore, in the month of April 2024, she has left the job and an FIR was registered.

3. Learned advocate Ms. Kruti Shah submitted that the present FIR is nothing but abuse and misuse of process of law for the reason that the present petitioner who is a Doctor and running a hospital had registered an FIR bearing FIR No. 11824001241248 of 2024 dated 8<sup>th</sup> July, 2024 under Sections 406, 408, 420 and 114 of Indian Penal Code against the present petitioner and one more girl who have allegedly siphoned an amount of Rs.3,23,15,283/- (Rupees Three Crores Twenty Three Lac Fifteen Thousand Two Hundred Eighty Three) and as the aforesaid FIR was registered on 8<sup>th</sup> July 2024, the complainant registered one FIR on 12<sup>th</sup> July 2024 as a counterblast to the aforesaid FIR and after almost more than two months, after she left the job.

3.1 It was also stated by learned advocate Ms. Kruti Shah appearing for the petitioner that even if, it is believed that there were some relations between the parties and some act was committed, then also the same was consensual in nature, otherwise victim would not have allowed

the present petitioner to send the messages for over a year from 20<sup>th</sup> March, 2023 till 3<sup>rd</sup> April 2024 and even the complainant also has replied those messages.

3.2 Further, it was pointed out by learned advocate Ms. Kruti Shah that as the FIR was registered against two female employees of the hospital by the present petitioner, those two female employees only have preferred two separate FIRs of similar nature against the present petitioner and therefore, the same amounts to abuse and misuse of process of law.

3.3 It was also pointed out by learned advocate Ms. Kruti Shah that the wife of the petitioner for the first time filed a complaint against the complainant on 17<sup>th</sup> June 2024 by making a complaint to the concerned Police Station whereas after twelve days thereafter, on 29<sup>th</sup> June 2024, a complaint was filed by both the victim girls, for which the wife of the petitioner's FIR was registered on 8<sup>th</sup> July 2024

and the victim girls FIR was registered on 12<sup>th</sup> July 2024, which would indicate that actually as the petitioner raised the issue about siphoning of more than rupees three crores and got an FIR registered against the victim girl, as a counterblast to that, the present FIR is registered against the present petitioner, after delay of more than two months from she left the job and after being in relationship for almost more than three years. She, therefore, states that the present petitioner is required to be protected, looking to the facts and circumstances of the case and considering the fact that the complainant is a well educated lady of the age of around 28 years.

4. Learned advocate Mr. Jaydeep Sindhi appearing for the original complainant submitted that the petitioner who happens to be a Doctor has misused his dominating position and he is in habit of having forceful relations with his employees.

4.1 It was also pointed out by learned advocate Mr. Jaydeep Sindhi that not one but two female employees have alleged similar kind of role of the present petitioner for which present FIR is registered under various sections including Section 376 of Indian Penal Code whereas other female employee has registered an FIR under Section 354 of Indian Penal Code which would indicate that the present petitioner has misused his dominating position and has tried to exploit the helplessness of the present applicant.

4.2 It was also pointed out by learned advocate Mr. Jaydeep Sindhi that in fact there are not two but three victims of the present applicant and one more employee of the hospital also was subjected to physical abuse by the present petitioner.

4.3 Learned advocate Mr. Jaydeep Sindhi appearing for the complainant by placing on record affidavit-in-reply pointed out from one

more social media chat between one other employee and the present petitioner. Learned advocate Mr. Jaydeep Sindhi from page 54 of the reply submitted that one more female employee was also subjected to physical abuse by the present petitioner and to substantiate his claim, he has placed on record, whats app chat which is produced along with reply. By making aforesaid submissions as well as by pointing out to the Instagram chat which is already referred in the FIR and by placing screenshots of the aforesaid chat on record, learned advocate Mr. Jaydeep Sindhi tried to point out that an offence is made out against the present petitioner and it cannot be said that this is just a counterblast to the FIR registered by the petitioner against the complainant and therefore, the matter is required to be investigated and present petitioner may not be protected and the petition is required to be dismissed.

4.4 Learned advocate Mr. Jaydeep Sindhi

appearing for the original complainant also submitted that the allegations of siphoning of amount is in respect of a period of five years from 2019 to 2024 and the FIR of the present complainant was taken only after direction issued by the Court of learned JMFC.

5. Learned Additional Public Prosecutor Ms. Vrunda Shah appearing for the respondent - State vehemently opposed the petition and stated that there are not one but two female employees have made allegations of physical abuse and rape against the present petitioner. However, at present except for the statement of victim girl, there is no material against the present petitioner. Learned Additional Public Prosecutor Ms. Vrunda Shah also could not dispute the fact that the FIR is registered after delay of almost two and half months as the victim girl has left the job on 30th April, 2024 and FIR is registered on 12th July 2024.

6. As far as allegations of learned advocate Mr.

Jaydeep Sindhi that some other female employee also was subjected to physical abuse by the present petitioner and Whats-app chat of that employee is produced on record by way of affidavit-in-reply by learned advocate Mr. Jaydeep Sindhi is concerned, upon instructions, learned APP Ms. Vrunda Shah submitted from the case papers that even the statement of that employee also was recorded and that employee has categorically stated that the present petitioner is just like her brother and she was not ill-treated by him.

7. I have also considered the fact that both the victim girls have preferred a petition before this Court for quashing being Special Criminal Application No.8861 of 2024 wherein vide order dated 22 July 2024, this Court while issuing notice has protected both the victim girls and it is alleged that the FIR which is subject matter of this petition is a counterblast to the aforesaid FIR.

8. Considering the fact that the petitioner is a Doctor running a hospital as well as considering the fact that an FIR was registered against the victim complainant by the wife of the present petitioner on 8<sup>th</sup> July 2024 under Section 406, 408, 420 and 114 of Indian Penal Code, coupled with the fact that the present complainant who is an adult lady of the age of around 28 years has got the FIR registered after delay of around two and half months. As well as considering the fact that the alleged obscene Instagram chat is not one sided chat but as can be seen prima-facie from whatever is produced on record as well as considering the nature of chat though prima-facie it is found to be obscene, the Court has reason to believe that the complainant could have as well blocked the petitioner and all this had continued as per the version of complainant for more than one year. Prima-facie, this seems to be a case of consensual relation which has subsequently turned sour between the

parties and therefore, interest of justice would be served if following order is passed :-

Issue **NOTICE** to the respondents making it returnable on **4<sup>th</sup> December, 2024**. Learned Additional Public Prosecutor waives service of notice on behalf of the respondent - State and learned advocate Mr. Jaydeep Sindhi waives service of notice on behalf of the respondent No. 2 - original complainant. In the meantime, though investigation may go on, there shall not be any coercive steps against the present petitioner.

**(NIRZAR S. DESAI,J)**

Pallavi