

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET
ASIDE FIR/ORDER) NO. 30587 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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AANANDA BHACHU HATUMATA & ORS.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MS ANU PATEL for MR VIRAT G POPAT(3710) for the
Applicant(s) No. 1,2,3

ADITYASINH J JADEJA(8854) for the Applicant(s) No. 1,2,3

NOTICE SERVED BY DS 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 : 31/07/2026

ORAL JUDGMENT

1. Invoking the provisions of Section 482 of the Criminal Procedure Code, 1973 (the Code), by filing this application, the applicants have prayed to quash and set aside the FIR being C.R.

No. II-242/2017 dated 10.12.2017, registered with Anjar Police Station, District: Kachchh (East) for the offence punishable under Sections 323, 504, 506(2), 354A and 114 of the Indian Penal Code, 1860 (IPC).

2. Though served, none appears for the respondent No. 2 - *de facto* complainant. The matter is of 2017 and is pending since then. Considering the age of the matter, the same is taken up for hearing on merits.

3. Filtered facts of the prosecution case are that on 08.12.2017 when the *de facto* complainant was returning home after voting at about 10:30 a.m., the accused, keeping grudge of the earlier discord, intercepted and firstly gave filthy abuses to the *de facto* complainant and then, by holding the hand of the *de facto* complainant, slapped her and hence, the *de facto* complainant frightened; she fell down and then started screaming and hence, Vrajlal Trikambhai, Shamjibhai Mata, Balvant Kana, Hira Mata and Madeva Shamji, intervened and hence, the accused went away from the place by threatening the *de facto* complainant to kill her as well as her husband. The frightened complainant returned home then and lately informed her husband who had gone out of home. Thereafter, upon her husband asking to file the complaint later, they lodged the FIR in question against the accused on 10.12.2017 before the concerned police station.

4. Heard, learned advocate for the applicants and the learned Additional Public Prosecutor for the – State.

5. The learned advocate for the applicants would submit that FIR itself says that there was a previous dispute between the applicants and the *de facto* complainant and in the circumstance, the FIR is nothing but an afterthought and the allegations for the offence punishable under Sections 354A and 506(2) of the IPC are not attracted and if those sections are taken out, the other offence, alleged against the applicants, are non-cognizable in nature.

5.1 The learned advocate for the applicants would further submit that present FIR is filed with exaggerated version on account of previous enmity between the applicants and the *de facto* complainant and if the FIR is taken at its face value, then also, the ingredients of offence punishable under Section 354A IPC are not satisfied as pulling/holding the hand of the *de facto* complainant only would not amount of outrage her modesty.

5.2 It is further submitted that before the offence of Criminal Intimidation under Section 506(2) of the IPC is made out, the prosecution has to establish that the accused had an intention to cause alarm to the complainant and mere threat, allegedly given by the applicants, would not constitute an offence punishable under Section 506(2) of the IPC. It is stated that, the FIR in question is filed with an ulterior motive, to wreck vengeance of the

old enmity, keeping personal grudge and vendetta of the earlier incident and thus, it is urged that this application may be allowed as prayed for.

6. *Per contra*, learned Additional Public Prosecutor for the respondent – State would submit that from a bare perusal of the FIR, it is clear that the *de facto* complainant, upon being threatened to kill her as well as her husband by the applicants, got frightened and returned to her residence and the FIR was lodged only one day thereafter, which clearly shows that alarm was caused to the *de facto* complainant and thus, *prima facie* ingredients of offence punishable under Section 506(2) of the IPC are made out from the contents of the FIR itself. He would further submit that from the fact of slapping in the presence of three witnesses who intervened and got the complainant saved from the applicants, it cannot be said that the FIR is filed with ulterior motive, to wreck vengeance of previous enmity. Accordingly, it is requested that since *prima facie* case is made out, no interference at the hands of this Court is required and the application is requested to be rejected.

7. Heard, the learned advocates for the respective parties present and perused the material available on record.

7.1 Prior to assessing the factual matrix on the touchstone of criminal jurisprudence, it is apposite to reinforce the settled legal position governing the scope, ambit, and limits of the inherent

jurisdiction vested under Section 482 of the Code. The jurisprudential parameters regulating the exercise of this extraordinary power have been authoritatively catalogued by Hon'ble Supreme Court in a long line of precedents, chief among them being the authoritative in the case of *State of Haryana v. Bhajan Lal* [AIR 1992 SC 604]. Therein, Hon'ble Supreme 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:

"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 Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given 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.

(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 first information report

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

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

(4) Where, the allegations in the FIR 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 Section 155(2) of the Code.

(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."

7.1 Evaluating the present applications on the anvil of the

principles enunciated in *Bhajan Lal (supra)*, this Court has to determine whether the allegations in the FIR, even when accepted at face value, satisfy the essential statutory ingredients of Sections 323, 504, 506(2), 354A and 114 of the IPC. This Court must ensure that criminal machinery is not permitted to degenerate into an engine of harassment where liability under criminal law is completely absent.

7.2 So far as Section 354A of the IPC is concerned, it relates to sexual harassment and punishment for sexual harassment, which reads as under:

“354A. Sexual harassment and punishment for sexual harassment. – (1) A man committing any of the following acts –

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine,

or with both."

7.2.1 Thus, upon reading of the FiR *vis-a-vis* the aforesaid section, there is nothing of the sort in the nature of sexual harassment by physical contact; demand or request for sexual favours; or making sexually coloured remarks, forthcoming on record so as to attract the provisions of this section.

7.3 So far as section 504 of the IPC is concerned, the same relates to intentional insult with intent to provoke breach of the peace, which reads as under:

"504. Intentional insult with intent to provoke breach of the peace. – Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

7.3.1 A perusal of the FIR in its entirety reveals no averment by which, the *de facto* complainant was provoked with intention or knowledge that such provocation would cause her to break the public peace. A cumulative reading of the FIR does not disclose any intentional insults, which must be: a) intending or knowing it to be likely that such provocation will cause him to break the public peace, or b) to commit any other offence, is made out and mere fact that the applicants abuse the *de facto* complainant is not sufficient to invoke Section 504 of the IPC.

8. So far as Sections 323 and 506(2) r/w. Section 114 of the IPC are concerned, least is to say that a *prima facie* case is made out against the present applicants inasmuch as, the FIR itself suggests that the *de facto* complainant was slapped and threatened by the present applicants, that too, in presence of more than one witnesses which are also named in the FIR itself.

9. In view of the above, this application succeeds, however, in part.

10. *In fine*, the application is partly allowed. FIR being C.R. No. II-242/2017 dated 10.12.2017, registered with Anjar Police Station, District: Kachchh (East) so far as it relates to the offences punishable under Sections 504 and 354A of the Indian Penal Code, 1860 is concerned, quashed and set aside *qua* the present applicants only. Rule is made absolute, accordingly.

10.1 It goes without saying that for the rest, the law shall take its own course.

10.2 **Direct service** is permitted.

[P. M. Raval, J.]

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