

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE  
FIR/ORDER) NO. 19394 of 2014**

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KUMAR KAMALBABU BHATT & 2....Applicant(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

=====

Appearance:

MR KASHYAP R JOSHI, ADVOCATE for the Applicant(s) No. 1 - 3

DS AFF.NOT FILED (R) for the Respondent(s) No. 2

MR SANDEEP N BHATT, ADVOCATE for the Respondent(s) No. 2

PUBLIC PROSECUTOR for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA**

**Date : 22/01/2016**

**ORAL ORDER**

1. By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicants-original accused persons seek to invoke the inherent powers of this Court, praying for quashing of the First Information Report dated 11<sup>th</sup> November, 2014 being C.R. No. I-57 of 2014 registered with the Mahila Police Station, Ahmedbad for the offence punishable under Sections 498A, 323, 506(2) read with Section 114 of the Indian Penal Code.

2. The case of the prosecution is as under:-

3. The first informant got married with the applicant No.1 in the year 2010 to be precise on 14<sup>th</sup> December, 2010. It appears that the first informant holds a degree of

Bachelor of Engineering. As usual, soon after the marriage, matrimonial problems cropped up between the husband and the wife. It is alleged that the applicants herein who are none other than the husband, father-in-law and mother-in-law respectively of the first informant started harassing the first informant. I take notice of a very curious allegation in the First Information Report that the in-laws forced the daughter-in-law to do her post graduation i.e. Master of Engineering. It appears that the first informant did complete her Masters in Engineering. All other allegations are quite vague and general in nature. They are nothing but an outcome of the usual wear and tear in the marriage.

4. For some reason or the other, the first informant thought fit to take up the issue with the Police and left the matrimonial home on 3<sup>rd</sup> March, 2013. She thought fit to lodge the FIR on 11<sup>th</sup> November, 2014.

5. I am told that the husband has preferred a petition for divorce before the Family Court at Rajkot and the proceedings are pending. Those proceedings may proceed further in accordance with law.

6. However, having regard to the nature of the allegations, I am of the view that no case worth the name is made out to attract Section 498A of the Indian Penal Code. I had an occasion to consider almost an identical

problem between the husband and the wife, in the case of Dipakbhai Ratilal Patel and other vs. State of Gujarat reported in 2014 (3) GLH 788. In the said case, I explained why Police should not be involved in these type of matrimonial problems because the involvement of the Police would put an end to the marriage, rather than giving an opportunity to the couple to reunite. I may quote the observations made by this Court from paras 16 to 33 as under:-

*“16. It is now well settled that the power under Section 482 of the Code has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Code does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.*

*17. The investigation of an offence is the field exclusively reserved for the Police Officers, whose powers in that field are unfettered, so long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII of the Code. While exercising powers under Section 482 of the Code, the Court does not function as a Court of appeal or revision. As noted above, the inherent jurisdiction under the Section, although wide, yet should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out*

*even if the allegations are accepted in toto.*

18. *In R.P. Kapur v. State of Punjab (AIR 1960 SC 866) the apex Court summarized some categories of cases where inherent power can, and should be exercised to quash the proceedings.*

*(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;*

*ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;*

*(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.*

19. *The Supreme Court, in the case of State of A.P. Vs. Vangaveeti Nagaiah, reported in AIR 2009 SC 2646, interpreted clause (iii) referred to above, observing thus:*

*"6. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp. (1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.*

*The illustrative categories indicated by this Court are as follows:*

*"(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 F.I.R. 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 F.I.R. 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.*

20. *Bearing the aforesaid principles in mind, I need to consider whether the FIR deserves to be quashed so far as the applicants Nos. 2 to 6 are concerned. I have already set out the relations of the petitioners Nos. 2 to 6 with the petitioner No.1 i.e. the husband of the respondent No.2, the complainant.*

21. *A plain reading of the FIR and the charge-sheet papers reveal that the allegations levelled by the respondent No.2 are quite vague, general and sweeping, specifying no instances of criminal conduct. Although the respondent No.2 is much more annoyed with her husband, with an obvious motive, has arrayed all the close relatives of her husband in the FIR. The Police also seems to have recorded stereo-type statements of the witnesses who are none other than the parents and other relatives of the respondent No.2 and has filed a charge-sheet. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of process of the Court. The Court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out prima-facie whether there is any grain of truth*

*in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge. To prevent abuse of process of the Court, and to save the innocent from false prosecutions at the hands of unscrupulous litigants, the criminal proceedings, even if they are at the stage of framing of the charge, if they appear to be frivolous and false, should be quashed at the threshold.*

22. *In Preeti Gupta Vs. State of Jharkhand, reported in 2010 Criminal Law Journal 4303(1), the Supreme Court observed the following:-*

*"28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.*

29. *The courts are receiving a large number of cases emanating from section 498-A of the Indian Penal Code which reads as under :*

*"498-A. Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

*Explanation.- For the purposes of this section, 'cruelty' means :*

*(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*

*(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."*

30. *It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.*

31. *The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its*

noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this

*judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law and Justice to take appropriate steps in the larger interest of the society."*

*23. In the aforesaid context, it will also be profitable to quote a very recent pronouncement of the Supreme Court in the case of Arnesh Kumar Vs. State of Bihar, Criminal Appeal No. 1277 of 2014, decided on 2nd July, 2014. In the said case, the petitioner, apprehending arrest in a case under Section 498A of the IPC and Section 4 of the Dowry Prohibition Act, 1961, prayed for anticipatory bail before the Supreme Court, having failed to obtain the same from the High Court. In that context, the observations made by the Supreme Court in paras 6, 7 and 8 are worth taking note of. They are reproduced below:-*

*"6. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. Crime in India 2012 Statistics published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762*

*persons all over India during the year 2012 for offence under Section 498-A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.*

*7. Arrest brings humiliation, curtails freedom and casts scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not*

only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

8. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short Cr.PC), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. .... .."

24. In the case of Geeta Mehrotra and anr. Vs. State of U.P. reported in AIR 2013, SC 181, the Supreme Court observed as under:-

"19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

20. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao vs. L.H.V. Prasad & Ors. reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their young days in chasing their cases in different courts.

The view taken by the judges in this matter was that the courts would not encourage such disputes.

21. In yet another case reported in AIR 2003 SC 1386 in the matter of *B.S. Joshi & Ors. vs. State of Haryana & Anr.* it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power."

25. Thus, it could be seen from the above that the apex Court has noticed the tendency of the married women roping in all the relatives of her husband in such complaints only with a view to harass all of them, though they may not be even remotely involved in the offence alleged.

26. Once the FIR is lodged under Sections 498A/406/323 of the IPC and Sections 3 and 7 of the Dowry Prohibition Act, whether there are vague, unspecific or exaggerated allegations or there is no evidence of any physical or mental harm or injury inflicted upon woman that is likely to cause grave injury or danger to life, limb or health, it comes as an easy tool in the hands of Police and agencies like Crime Against Women Cell to hound them with the threat of arrest making them run helter skelter and force them to hide at their friends or relatives houses till they get anticipatory

*bail as the offence has been made cognizable and non-bailable. Thousands of such complaints and cases are pending and are being lodged day in and day out. There is a growing tendency to come out with inflated and exaggerated allegations roping in each and every relation of the husband and if one of them happens to be of higher status or of a vulnerable standing, he or she becomes an easy prey for better bargaining and blackmailing.*

*27. Mr. Raval, the learned APP in his own way may be right in submitting that the Court, while exercising inherent power under Section 482 of the Code, should not embark upon an enquiry as regards the truthfulness of the allegations because, according to Mr. Raval, once there are allegations disclosing commission of a cognizable offence, then whether they are true or false, should be left for the trial Court to decide at the conclusion of the trial. According to Mr. Raval, at the best, the applicants Nos. 2 to 6 could plead in their defence the category No.7, as indicated by the Supreme Court in the case of State of Haryana (supra).*

*28. Since Mr. Raval has raised such issue, I must deal with it as it goes to the root of the matter. For the sake of convenience, category 7, as laid down by the Supreme Court in State of Haryana (supra) is reproduced hereinbelow:-*

*"(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."*

*29. I am of the view that the category 7 referred to above should be taken into consideration and applied in a case like the present one, a bit liberally. If the Court is convinced by the fact that the involvement by the complainant of all close relatives of the husband is with an oblique motive, then even if the FIR and the charge-sheet disclose commission of a cognizable offence on plain reading of the both, the Court, with a view to doing substantial justice, should read in between the lines the oblique motive of the complainant and take a pragmatic view of the matter. If the proposition of law as sought to be canvassed by Mr. Raval, the learned APP is applied mechanically to this type of cases, then in my opinion, the very inherent power conferred by the Code upon the High Court would be rendered otiose. I am saying so for the simple reason that if the wife, due to disputes with her husband, decides to not only harass her husband, but all other close relatives of the husband, then she would ensure that proper allegations are levelled against each and every such relative, although knowing fully well that they are in no way concerned with the matrimonial dispute between the husband and the wife. Many times the services of professionals are availed of and once the complaint is drafted by a legal mind, it would be very difficult thereafter to pick up any loopholes or other deficiencies in the same. However, that does not mean that the Court should shut its eyes and raise its hands in helplessness, saying that whether true or false, there are allegations in the first information report and the charge-sheet papers discloses the*

*commission of a cognizable offence.*

*It is because of the growing tendency to involve innocent persons that the Supreme Court in the case of Pawan Kumar Vs. State of Haryana, AIR 1998 SC 958 has cautioned the Courts to act with circumspection. In the words of the Supreme Court "often innocent persons are also trapped or brought in with ulterior motives and therefore this places an arduous duty on the Court to separate such individuals from the offenders. Hence, the Courts have to deal such cases with circumspection, sift through the evidence with caution, scrutinize the circumstances with utmost care."*

*30. More importantly, the respondent No.2 has not explained as to why it took more than four years for her to register the FIR. Is it so because the husband initiated proceedings for divorce in the year 2006. My attention has been drawn by Mr. Patel, the learned Advocate appearing on behalf of the applicants to a notice dated 17th April, 2008, issued by the respondent No.2, through her advocate to the petitioner No.1, wherein there is not a whisper of any allegations against any of the relatives of the husband, which includes the applicants Nos. 2 to 6.*

*31. Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on account of sheer hatredness towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage. In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned. The only reason why I am saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatredness for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary.*

However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilized for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. In all cases where wife complains of harassment or ill-treatment, Section 498-A of the IPC cannot be applied mechanically. No F.I.R is complete without Sections 506(2) and 323 of the IPC. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day today married life, may also not amount to cruelty.

32. Lord Denning, in *Kaslefsky Vs. Kaslefsky* (1950) 2 All ER 398 observed as under:-

"When the conduct consists of direct action by one against the other, it can then properly be said to be aimed at the other, even though there is no desire to injure the other or to inflict misery on him. Thus, it may consist of a display of temperament, emotion, or perversion whereby the one gives vent to his or her own feelings, not intending to injure the other, but making the other the object-the butt-at whose expense the emotion is relieved."

When there is no intent to injure, they are not to be regarded as cruelty unless they are plainly and distinctly proved to cause injury to health .....when the conduct does not consist of direct action against the other, but only of misconduct indirectly affecting him or her, such as drunkenness, gambling, or crime, then it can only properly be said to be aimed at the other when it is done, not only for the gratification of the selfish desires of the one who does it, but also in some part with an intention to injure the other or to inflict misery on him or her. Such an intention may readily be inferred from the fact that it is the natural consequence of his conduct, especially when the one spouse knows, or it has already been brought to his notice, what the consequences will be, and nevertheless he does it, careless and indifferent whether it distresses the other spouse or not. The Court is, however not bound to draw the inference. The presumption that a person intends the natural consequences of his acts is one that may not must-be drawn. If in all the circumstances it is not the correct inference, then it should not be drawn. In cases of this kind, if there is no desire to injure or inflict misery on the other, the conduct only becomes cruelty when the justifiable remonstrances of the innocent party provoke resentment on the part of the other, which evinces itself in actions or words actually or physically directed at the innocent party."

33. What constitutes cruelty in matrimonial matters has been well explained in *American Jurisprudence* 2nd edition Vol. 24 page 206. It reads thus:-

"The question whether the misconduct complained of constitute cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts.

*The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances."*

7. In view of the above, this application succeeds and is hereby allowed. The First Information Report being C.R. No. I-57 of 2014 lodged with the Mahila Police Station, Ahmedbad is hereby ordered to be quashed. I am told that the Passports are with the Investigating Officer. The Investigating Officer shall hand over the Passports to the applicants at the earliest.

**(J.B.PARDIWALA, J.)**

Manoj

