

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO.9897 of 2017
FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE A.S.SUPEHIA Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

KENAL VRAJMOHAN SHAH
Versus
STATE OF GUJARAT

Appearance:

MR PR ABICHANDANI(102) for the PETITIONER(s) No. 1
MR PUBLIC PROSECUTOR(2) for the RESPONDENT(s) No. 1
MS BHAVINI JANI for SAIRICA S RAJU(8761) for the
RESPONDENT(s) No. 2

CORAM: HONOURABLE MR.JUSTICE A.S. SUPEHIA

Date : 13/12/2018

CAV JUDGMENT

(1) By way of the present writ petition, the petitioner seeks quashing of First Information Report (F.I.R.) being C.R. No.I-60 of 2017 registered with Mahila Police Station, Ahmedabad City, Dist. Ahmedabad for the offences punishable under sections 499, 376 and 506(2) of the Indian Penal Code, 1860 (IPC).

(2) The facts of the case as are mentioned in the memo of application are as under:

2.1) As stated in the F.I.R., the first informant is the resident of Jodhpur, Rajasthan; she came to Ahmedabad for getting a job in year 2014 and at that time she had stayed with her friend - Kiran Sankhla, who knew the petitioner and she had told the first informant that she should have a meeting with the petitioner at Cafe Coffee Day and, therefore, the first informant had a meeting at Cafe Coffee Day at Himalaya Mall in October, 2014 with the petitioner. It is further stated in the F.I.R. that the petitioner took an interview at Cafe Coffee Day and informed that she will receive a call from H.R. (Manager) Srilatha Nair. Three days thereafter, she received a call from Srilatha Nair and her telephonic interview was also conducted at the office at Mithakhali. Thereafter, she left for Jodhpur, Rajasthan and upon intimation having been received from the company, she joined the services w.e.f. 10.11.2014 as Personal Assistant and started staying at a house located at Memnagar Gam, Ahmedabad, which was taken on rent.

2.2) It is stated in the F.I.R. that after about a month of joining the service, since the first informant's health was not good, the petitioner went to her house with some food in the afternoon and after having the food since her health was not good she had gone to sleep and the petitioner took her nude pictures. It is stated that on the next day when she went to her office, the petitioner showed her the nude pictures and had started blackmailing her. It is stated in the F.I.R. that the petitioner had to visit Odhav, Kathwada and Nandesari, Baroda for the work of the company and she also had to accompany him and during that period, the petitioner-accused had tried to take benefit of the situation of her being alone and asked her to stay in the office till late. It is alleged in the F.I.R. that the same was objected to by the complainant and hence, the petitioner - accused used to threaten the complainant to make the pictures viral and also terminate her services. It is further alleged that since the financial condition of the complainant was not stable, the first informant did not talk about this to anybody. It is alleged that the petitioner used to take her to some hotel and while threatening her, used to have

physical relationship with the first informant. Since the first informant was told that the petitioner has pictures of the her, she chose not to tell this to anybody.

2.3) It is also alleged in the F.I.R. that the petitioner thereafter, took an apartment at the address mentioned in the F.I.R. on rent in August, 2015, where the first informant, as stated in the F.I.R., stayed till June, 2016. It is alleged that the petitioner used to frequently visit the house and used to have physical relation without the consent of the first informant. It is further alleged that she was fed up and, therefore, she left the said apartment and the petitioner used to take her to different places. It is further alleged in the F.I.R. that due to the threats of the petitioner, the first informant was scared and, therefore, she returned to her native place at Jodhpur, Rajasthan.

2.4) It is further alleged in the F.I.R. that the first informant got married to one Shoukin Malik, a resident of Rajasthan. It is alleged that the petitioner went to the complainant's matrimonial homes in December,

2016 and called her husband on his phone and asked him to meet him since he would like to say something about the complainant and told him that she had physical relationship with her and she is not a good girl, and she is having relationship with other boys also. Despite that her husband Shoukin Malik did not meet him, and on the next day he received a cover in which there were nude photographs of the complainant which led to discord between the first informant and her husband. Hence, the complainant has filed the impugned F.I.R. against the petitioner.

- (3) Learned advocate Mr. Abichandani appearing on behalf of the petitioner has submitted that the allegations made in the F.I.R. are made with an ulterior motive for harassing the petitioner and apparently with *mala fide* intention of extorting / extracting money. He further submitted that the first informant has chosen to suppress vital aspects that : (i) the first informant had initially threatened the petitioner to involve him in a false complaint; (ii) thereafter, the first informant did not want to pursue the complaint / application, because there was a settlement arrived at

between the parties, which was reduced in writing dated 08.07.2016 (at Annexure-B to the petition); (iii) a separate agreement was also drawn on the same day i.e. 08.07.2016, *inter alia*, indicating that there was no electronic data. It appears that it was only to the subjective satisfaction of the first informant that the said separate assertion was narrated in the said agreement; (iv) the first informant subsequently filed an application before the Sola High Court Police Station, Ahmedabad - Application No.2419 of 2016; (v) pursuant to the said application, the Thaltej Police Chowky of Sola High Court Police Station had recorded the statement of the first informant on 27.07.2016 (at Annexure-D to the petition); (vi) pursuant to the aforesaid statement, officials of the Thaltej Police Chowky had also recorded statement of the petitioner on 27.07.2016 (at Annexure-E to the petition); (vii) in August, 2017, the first informant had visited the office as well as the residential premises of the petitioner and tried to contact the petitioner; (viii) there was mutual agreement between the parties and even if the same was admitted for the sake of argument, the same was

purely consensual. In fact the entire story is fabricated and hence, the same is not admitted. The allegations leveled against the petitioner till date are false and are in fact for obvious reasons that the same are made with a *mala fide* intention of harassing the petitioner.

4.1) Learned advocate for the petitioner submitted that the above aspects are irrefutable. He has submitted that the F.I.R. is nothing but a classic example of abuse of process of law and is filed with a view to wreck vengeance against the petitioner so as to put the petitioner under fear of social stigma and achieve the ill-intention and ulterior motive of the first informant. He submitted that the aforesaid aspects clearly indicate that on the earlier occasion also the petitioner had succumbed to the arm-twisting tactics of the first informant apparently and solely with an object to ensure that the dignity of the family of the petitioner is not tarnished in the society

4.2) Learned advocate for the petitioner submitted that there was an agreement

between the first informant and the petitioner. He submitted that the allegations made in the F.I.R. are completely baseless and *de hors* the truth. He submitted that this is so stated on the basis of the fact that in pursuance of the application given by the first applicant before the police in 2016 bearing No.2419 of 2016 registered with the Sola High Court Police Station, statement of the first applicant was recorded on 27.07.2016. learned advocate further submitted that bare reading of the statement would lend credence and support to the assertions which are made in the preceding paragraphs. He submitted that the version of the F.I.R. is completely self-contradictory to the version which is stated in the statement of the first informant.

- 4.3) Learned Advocate Mr.Abichandani has further submitted that subsequently, the petitioner has received also the statement dated 26.09.2016 made by the present first informant before the concerned Police Sub Inspector, H.N.Barua of Ghatlodia police station pursuant to her complaint No.1138. He has submitted that the first informant has categorical stated that a compromise has

been entered between the petitioner and the first informant, and she would neither like to initiate police action or file any complaint and she is producing the compromise which is recorded on stamp paper of Rs.100/-. He has submitted that the same bears the statement and signature of the present first informant. Thus, he has urged the impugned complaint has only been made with ulterior motive by the first informant. Learned advocate has also pointed out that the allegations made by her in the aforesaid complaints made by her application dated 24.07.2016 and 03.10.2017 and has submitted that they are verbatim same.

4.4) Learned advocate for the petitioner submitted that apprehending such frivolous complaint being filed in 2016, when such illegitimate demands were made by the first informant, the wife of the petitioner, who was told about the ill-design of the first informant by the petitioner, had sent an email apprehending such illegal demands and harassment by the first informant, by narrating the details in the contents of the mail. A bare reading of the said email would clearly indicate that the first informant

had deployed such threats and had started arm-twisting the petitioner. He submitted that the chronology of the date of email and the statement indicating the settlement between the parties clearly indicate that the first informant was successful in her design of extracting money from the petitioner, resulting into settlement.

4.5) Learned advocate for the petitioner further submitted that only out of fear of social stigma the petitioner had earlier succumbed to the illegitimate demands of the first informant. He submitted that by suppressing all the above aspects, the first informant has filed a frivolous and concocted story in the form of an F.I.R., solely with a view to arm-twist the petitioner and to succumbing to her illegitimate demands. This is so stated on the basis of the fact that in the month of August, 2017, the first informant had called upon the wife of the petitioner Mr.Falguni Shah, the reasons for such calling are very apparent and it appears that since the petitioner did not succumb to the wishes of the first informant, a fabricated version is narrated in the F.I.R.

4.6) Learned advocate for the petitioner further submitted that in the background of the above-mentioned facts, which are irrefutable, filing of the F.I.R. is nothing but an afterthought, deployed as a strategy to arm-twist the petitioner to succumb to the illegitimate demands of the first informant. He further submitted that having failed to extract money from the petitioner, the first informant has filed the impugned F.I.R. with a view to wreck vengeance upon the petitioner so as to destroy his social image and thereby cause grave harm to the reputation of the petitioner.

4.7) Learned advocate for the petitioner also submitted that the version in the impugned F.I.R. and which was recorded in the agreement between the petitioner and the first informant are diametrically opposite. He submitted that even that agreement was notarized before the Notary Public. He further submitted that with a view to forget the painful and unfortunate chapter of the life, the petitioner had destroyed all the audio recording of the settlement process as well as the written agreement. However, the petitioner is having a copy of the unsigned

settlement agreement. Learned advocate also submitted that the petitioner, with a view to substantiate this assertion, relies upon the statements recorded by the Sola High Court Police Station, Ahmedabad City on 27.07.2016, where there is an admission by the first informant about having execution Memorandum of Understanding (MoU)/ agreement. Learned advocate submitted that to support the assertion, the petitioner has approached the Notary Public before whom the document was executed and has requested for a photo copy of the page on which the signatures of the petitioner as well as the first informant were there.

4.8) Learned advocate further submitted that a copy of the agreement which was entered into between the parties was entered on 08.07.2016. The bare reading of the said agreement clearly demonstrates that assuming for the sake of an argument, without admitting any aspects, at best it can be said to have been consensual relation. The contents of the F.I.R. and those that can be found in the agreement between the parties are diametrically opposite. Learned advocate further submitted that the allegations which

are leveled in the impugned F.I.R. of having taken nude photographs are baseless and the same appears to have been made only with a view to wreck vengeance since the petitioner, this time i.e. in 2017 did not succumb to the arm-twisting tactics of the first informant. The above aspects make it clear that the impugned F.I.R. is nothing but a classic example of abuse of process of law.

4.9) Learned advocate for the petitioner further submitted that the first informant has made consistent attempts to contact the petitioner during the months of July, August, September, October and November, 2017. He submitted that those were the attempts made only with a view to arm-twist the petitioner by threatening him of launching malicious prosecution against the petitioner. He submitted that not a single outgoing call was made by the petitioner from his personal mobile phone. He further submitted that perusal of the material would substantiate the assertions of the petitioner and thereby it can safely be said that the impugned F.I.R. is filed with *mala fide* intention and the same is manifestly

filed to wreck vengeance against the petitioner.

4.10) Learned advocate further submitted that the chronology of the facts would clearly indicate the truthful version, which is the version diametrically opposite to the version as narrated in the F.I.R. filed by the original complainant – respondent No.2. He submitted that the said piece of evidence clearly destroys the narration in the impugned F.I.R. He has submitted that absolutely impalpable version is given by the first informant but a clear case of wrecking vengeance and victimizing the petitioner. Lastly, the learned advocate submitted that continuation of the investigation and prosecution based thereon, would amount to abuse of process of law as can be demonstrated in the preceding paragraphs and hence, in view of the ratio laid down by the Apex Court in the case of State of Haryana Vs. Bhajanlal & Ors., AIR 1992 S.C. 604, the impugned F.I.R. as well as all consequential proceedings arising out of the F.I.R. deserve to be quashed and set aside. He has also placed reliance on the judgement of the Coordinate Bench dated 26.03.2015 passed in Cri.M.A. No.15688/2014.

(4) Learned advocate Ms.Jani appearing on behalf of respondent No.2 – original complainant has submitted that the impugned F.I.R. does not require any interference by this court since *prima facie* offenses are made out against the petitioner. She has submitted that the first informant has victimized by the petitioner and she has been forced to maintain the physical relationship by the present petitioner by blackmailing her with the objectionable photographs taken by him.

5.1) She has submitted that she was married with one Shoukin Malik and was staying at Jodhpur at Rajasthan at that time, the petitioner called her husband and when he refused to meet her, he had thrown the objectionable photographs at her home by the present petitioner which led to breakup of her marriage. She has submitted that the petitioner came to Rajasthan for blackmailing her with the objectionable photographs.

5.2) Apropos the contention raised by learned Advocate Mr.Abichandani regarding the compromise, she has submitted that the compromise does not bear her signature.

Moreover, she has also vehemently stressed that the the first informant was not aware of the contents of the statement dated 26.09.2016 recorded by the Shri H.N.Baria, Police Sub Inspector, Ghatlodia Police Station, since the contents were not explained to her as it was in Gujarati and she does not know Gujarati. As regards the statement dated 27.07.2016 recorded at Sola-High Court Police station, she has submitted that she had never made such statement in Sola Police Station and the same cannot be believed. Learned advocate Ms.Jani has also pointed out complaint dated 24.07.2016. She has submitted that her application was transferred to Chandkheda Police station vide letter dated 10.08.2016. Thereafter, the same was again transferred to Ghatlodia police station. Again the petitioner made an application to Sola-High Court police station on 03.10.2017. She has submitted that after the compromise was entered between the petitioner and the first informant, he had again started blackmailing, and hence she was constrained to file the present F.I.R.

5.3) Learned advocate Ms.Jani has further contended that at this stage the sections

alleging the offense cannot be dissected and the investigation is to be permitted to be further carried out.

- (5) Maintaining the aforesaid submissions of the learned advocate for the complainant, the learned Additional Public Prosecutor Mr.H.K.Patel for the respondent – State has also submitted that *prima facie* the impugned F.I.R. reflects that the offenses against the petitioner are made out and hence, no interference of this court is called exercising the power under section 482 of the Code of Criminal Procedure, 1974 (for short 'the Cr.P.C.'). He has submitted that investigation the *prima facie* reveals that the petitioner is involved in the offences as alleged in the F.I.R.
- (6) Heard the learned advocates appearing for the respective parties. Both the advocates for the respective parties have placed reliance on the documents which are supplied during the course of hearing. The same are taken on record.
- (7) The following documents are placed on record:

a) The Memorandum of Understanding (compromise) dated 08.07.2016 made on the stamp paper of Rs.100/- bearing the photographs and signatures of both the petitioner and the first informant;

b) Another Memorandum of Understanding (compromise) of even date made on the stamp paper of Rs.100/- bearing the photographs and signatures of both the petitioner and the first informant incorporating the condition that either of them will not use the electronic data like video, photographs or messages, and if even the same is available the parties shall destroy the same;

c) statements dated 27.7.2016 made by both the petitioner and complainant recorded at Sola-High Court station admitting their consensual physical relationship;

d) statement of the first informant and the petitioner dated 26.09.2016 recorded by P.S.I H.N.Baria, Ghatlodia Police Station;

e) letter dated 27.9.2016 written P.S.I Baria to Police Inspector, Ghatlodia Police station informing about the statement recorded by him.

(8) The genesis of lodging the impugned F.I.R is throwing of the objectionable photographs of the first informant by the petitioner at her residence at Jodhpur, Rajasthan. A perusal of the aforementioned documents will reveal that the physical relationship of the first informant with the petitioner was consensual. The contents of the compromise reveal that the physical relationship was voluntary. It is also incorporated in the compromise that the First Informant has received a substantially huge amount from the petitioner and she undertakes not to make any demand directly or indirectly. Both of them had also agreed to destroy the objectionable electronic data and photographs. The learned advocate has denied the aforementioned compromises by stating the same does not bear her signatures. As regards the photographs of the first informant, she has stated that the petitioner must be having the same. As regard the statement dated 26.09.2016 recorded by P.S.I H.N.Baria it is submitted that the first informant was not aware of the contents. It is pertinent to note that the statement dated 26.09.2016 reveals that the first informant has put her signature on the same and she has also stated that the

same was explained to her in Hindi. She has specifically stated that a compromise has been arrived and she would not like to take any police action or file any complaint. In order to verify the same this Court had summoned the concerned Police Sub-Inspector, Shri H.N.Baria and his statement was recorded on 06.12.2018 wherein he has stated that all the contents of the statement were explained to the first informant in Hindi and she had voluntarily given the statement without any undue coercion or pressure. Thereafter, the concerned Police Sub-Inspector vide letter dated 27.09.2016 has informed the Police Inspector that the statement of the first informant and the present petitioner was recorded by him on 26.09.2016. He has further mentioned that the both the first informant and the petitioner had produced a compromise which was made on stamp paper of Rs.100/-. Further it is also stated the first informant does not want to take any police action or lodge any police complaint against the petitioner. The statements dated 26.09.2016 are of both the petitioner and the first informant which establishes the fact of the compromise arrived amongst them. The first informant has never raised her grievance before any

authority questioning the veracity or authenticity of the statement recorded by the P.S.I, Ghatlodia Police Station.

- (9) In sequel, with regard to the statements dated 27.07.2016 made by both the petitioner and complainant recorded at Sola-High Court police station admitting their consensual physical relationship, the learned advocate for the first informant has stated that she was not aware of such statement. The petitioner in his statement has also admitted the consensual physical relationship. In the statement dated 27.07.2016, the first informant has admitted that physical relationship between her and the petitioner was consensual, and she was aware that he was married. Both the petitioner and the first informant have stated that they have arrived at compromise on a stamp paper of Rs.100/-, which bear their signatures. No grievance is raised by her to this statements also before any authority. Thus, it can be safely presumed that subsequently the first informant has resiled from such compromise and a story has been concocted by her about the present petitioner visiting at Jodhpur, Rajasthan

and throwing the objectionable photographs at her matrimonial residence. Upon inquiring from the investigating officer regarding any evidence of phone call made by the present petitioner to the husband of the first informant, he has responded in negative to this Court. No evidence in the investigation has surfaced establishing the fact of making any phone call or contacting the husband of first informant in Rajasthan. It is also hard to comprehend that the petitioner would visit the first informant at Jodhpur, Rajasthan and simply throw the objectionable pictures at her residence after entering into compromise by paying her substantial amount. It is also stated by the first informant in the F.I.R., she was staying in the rented flat provided by the petitioner since March 2015, and the petitioner used to visit her and compelled her to maintain physical relationship with her till 2016. Thereafter, she vacated the flat due to harassment of the petitioner. It is further stated that thereafter, the petitioner was taking her to Gandhinagar, and during such visit, when the petitioner stopped for water, she took his vehicle and fled with the car and went to Company guest house and left the car. Thereafter, she has stated

that she went to stay at her home in Memnagar since she was very afraid of the petitioner and stayed at home for three days. The F.I.R. further narrates that the first informant was threatened by the petitioner, hence she left to Rajasthan and got married to one Shoukin Malik. A close scrutiny of the narration of the incidents, indubitably reveals that the allegations made by the first informant are replete with infirmities and improbabilities. The entire episode right from the beginning till the end narrated by her does not inspire confidence.

- (10) In the present case the first informant is well educated and is of aged 28 years and is having adequate intelligence and maturity to understand the significance of the compromise and the statements made by her before the police authorities. She cannot recant from such statements or the compromise in wake of the fact that she has not complained or questioned about the authenticity, veracity or credibility of the same before any authority. For the first time before this Court during the course of the arguments the same are refuted. Hence,

such submissions raised for the first time raising the doubts about the police statement made by her and the petitioner does not merit acceptance and are liable to be rejected. The Supreme Court in the case of **State of Haryana Vs. Bhajanlal & Ors.** (supra) has laid down the exceptions wherein the powers under section 482 of the Cr.P.C. should be exercised. The same are thus:

" In the backdrop of the interpretation of the various relevant provisions of the Code under Ch. 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 sec. 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 channelized and inflexible guidelines or rigid formula 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 sec. 156(1) of the Code except under an order of a Magistrate within the purview of sec. 155(2) of the Code.

(3) Where the controverted 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 sec. 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."

The present case will fall under Exception (5) and (7) of the aforesaid parameters. The allegations and the facts incorporated in the F.I.R. appear to be improbable and the F.I.R. has been maliciously instituted.

(11) In view of the aforesaid factual scenario, in the considered opinion of this court, the

impugned F.I.R. is nothing but a sheer abuse of process of law and the same is lodged only with a sole purpose of harassing the petitioner.

(12) Resultantly, the present petition is allowed. The impugned F.I.R. being C.R. No.I-60 of 2017 registered with Mahila Police Station, Ahmedabad City, Dist. Ahmedabad as well as all other consequential proceedings arising from the impugned F.I.R. are hereby quashed and set aside. RULE is made absolute.

Sd/-
[A. S. SUPEHIA, J]

Bhavesh-[pps]*

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THE HIGH COURT
OF GUJARAT

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