IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 6657 of 2018
With
R/CRIMINAL MISC. APPLICATION NO. 6389 of 2018

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No
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KHODABHAI DHANABHAI JOGRANA
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR MK PUJARA with MR JAY AMBANI for MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1
JAIVIK UDAY BHATT(7319) for the Respondent(s) No. 2
MR UDAY H BHATT(6457) for the Respondent(s) No. 2
MR ROHAN SHAH, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE P. M. RAVAL**

Date : 07/10/2026

ORAL JUDGMENT

1. Both these applications arise out of the same FIR and accordingly, they were heard together and are being decided by

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this common judgment and order.

2. By these applications, the applicants are before this Court praying for quashing and setting aside the FIR being C.R. No. I-37 of 2018, registered on 09.03.2018 with Malviyanagar Police Station, District: Rajkot, for the offences punishable under Sections 306, 386, and 114 of the Indian Penal Code, 1860 (IPC) as well as Sections 5, 40 and 42 of the The Gujarat Money-Lenders Act, 2011 (the Money-Lenders Act).

3. *Rule*. Learned advocates for the respective respondents waive service.

4. Facts of the prosecution case are that Parulben, W/o. Amitbhai Bagthariya, lodged the impugned FIR on the facts that her marriage was solemnized with the deceased in the year 2009, and out of the said wedlock, they have a son named Rahil who was 9 years old at that time. Her husband (deceased) and brother-in-law - Samirbhai run a barber shop under the name and style of "Samir Hair Art" situated at Gitanagar Street No. 5. In the year 2012–2013, her husband had borrowed a sum of Rs. 4,00,000/- with interest at the rate of 5% from one Khodabhai Dhanabhai Jograna (applicant in Criminal Misc. Application No. 6657 of 2018), who was residing in neighborhood, and had also obtained money on interest from other persons. Her husband had borrowed these amounts to enter into a partnership business in construction with

one Kalpeshbhai Kadiya, residing at Gitanagar. However, having suffered losses in the said construction venture, Kalpeshbhai Kadiya expressed his inability to arrange the funds immediately and informed the husband of the *de facto* complainant that he would return his invested capital in piecemeal. In order to repay the money borrowed on interest, a housing loan of Rs. 10,00,000/- was procured against the residential house, which was registered in the name of the mother-in-law of the *de facto* complainant, and out of the said loan, repayments were made to Khodabhai Dhanabhai Jograna and other creditors. The husband of the *de facto* complainant had not revealed specific details to the *de facto* complainant, his mother and the brother regarding the identities of the persons from whom he had borrowed money on interest, merely stating that he had availed money on interest and would repay on his own. To pay off the interest to these lenders, her husband resorted to taking hand loans (hath-uchhina) and further loans on interest from various individuals. To the best of her knowledge, the husband of the *de facto* complainant had borrowed a cumulative sum of Rs. 5,85,000/- in staggered amounts from his friend Kanabhai Dhanabhai Maiyad, on interest ranging between 5% and 10%. Despite paying interest regularly for the past five years at the rate of 5% to 10%, Kanabhai continued to unlawfully demand the outstanding principal amount of Rs. 5,85,000/-. In order to meet the interest liabilities of Kanabhai, in August 2017, the husband of the *de facto* complainant borrowed Rs. 2,00,000/- at an exorbitant interest rate of 10% from Lalabhai Rupabhai Mir

(Bharwad). Towards the said liability, interest at the rate of Rs.20,000/- per month was paid for three months, yet the debt remained outstanding. The husband of the *de facto* complainant had taken money under a financial scheme from Pravinbhai Babubhai Gadhvi, resident of Rajkot, and had additionally borrowed Rs.1,00,000/- at 10% interest, approximately ten months prior. In the ninth month (September) of the preceding year, her husband borrowed Rs.1,50,000/- at 8% interest from Kalubhai Shiyaliya (applicant in Criminal Misc. Application No. 6389 of 2018, residing near Jai Vijay School, Gitanagar. As collateral security, said Kalubhai obtained from two blank cheques of Indian Overseas Bank bearing only signatures of her husband without any date or amount endorsed thereon, alongside a blank non-judicial Stamp paper of Rs.50/- bearing signature of only husband of the *de facto* complainant. The husband of the *de facto* complainant had also paid 8% interest on the said amount of Rs. 1.5 lakhs. Her husband continuously arranged hand loans from his friends to service the mounting interest payments to the aforesaid persons. The above-named lenders routinely subjected her husband to intimidation and coercion, frequently visiting their residence and shop of her husband, threatening that he would be forced to sell his house and shop to satisfy their exorbitant demands. Furthermore, Khodabhai Dhanabhai Jograna, a relative of Lalabhai Rupabhai Mir, used to visit and issue threats for recovering Lalabhai's money. Although, previously repaid Rs.10,00,000/- against an earlier principal loan of Rs.4,00,000/-

taken from Khodabhai Dhanabhai Jograna, he continued to accost the husband of the *de facto* complainant on the street, at the shop, and at their residence and in case of delay of even 2–3 days in paying the interest, he arbitrarily levied arbitrary penalties and compounded the dues, causing the husband of the *de facto* complainant extreme mental distress. Due to their escalating harassment and coercive recovery tactics, an application was previously submitted by the *de facto* complainant, her husband and her brother-in-law namely Samirbhai, and also her mother-in-law namely Ramaben before the police authorities. Following the application, an attempt was made to arrive at an amicable resolution through talks; however, the accused continued to arbitrarily inflate their interest demands by two to three-fold, subjecting the husband of the *de facto* complainant to unrelenting stress. Her husband repeatedly expressed that "Kanabhai Dhanabhai Maiyad, Lalabhai Rupabhai Mir (Bharwad), Pravinbhai Babubhai Gadhvi, Kalubhai Shiyaliya, and Khodabhai Dhanabhai Jograna were mounting unbearable pressure on him for the principal and the interest and that, he was exhausted and would die due to their torture to which, the *de facto* complainant and other family members used to console him. However, thereafter, Kalubhai Shiyaliya unilaterally filled in an amount of Rs.3,00,000/- in each of the two blank signed cheques drawn on Indian Overseas Bank, deposited in the bank account, got them dishonored, and served a statutory Legal Notice through an Advocate, which drove her husband into severe mental trauma. All settlement talks were

failed. On 08.03.2018, at about 09:00 a.m., the husband of the *de facto* complainant left home on his motorcycle stating that he was proceeding to the shop. Subsequently, at about 04:30 p.m., her brother-in-law Samirbhai contacted over the telephone informing to rush to the Civil Hospital immediately as her husband consumed poison and was critical. Thereupon, she picked up her son from school and reached the Civil Hospital in an auto-rickshaw accompanied by her father, Natubhai and upon inquiry by her and her brother-in-law, her husband stated due to unrelenting harassment of Kanabhai Maiyad, Lalo Mir, Pravinbhai Gadhvi, Khodabhai Dhanabhai, and Kalubhai Shiyaliya, he had consumed poisonous medicine. Thereafter, he lost consciousness. While under initial treatment at the Civil Hospital, upon the advice of relatives, he was shifted and admitted for intensive care at Shanti Multi-Speciality Hospital, Sadhu Vaswani Road at around 06:00 p.m. on 08.03.2018, where, he died during the course of treatment approximately at 09:00 p.m. Thus, the aforesaid five accused persons advanced unauthorized loans at exorbitant interest rates, extorted blank signed cheques and blank stamp papers, arbitrarily filled and bounced the cheques, served legal notices, persistently subjected the deceased to aggressive recovery (pathani ughrani), instilled constant fear of death, and levied arbitrary and extortionate penalties. By creating unendurable psychological pressure and continuously tormenting him, the accused abetted and drove the deceased to commit suicide by consuming poisonous substance, resulting in his death during

treatment. Thus, on the said fact, the FIR in question has been lodged.

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

6. <u>Submissions on behalf of the applicant in Criminal Misc. Application No. 6657 of 2018</u>:

6.1 It is submitted that the FIR is based on a false prosecution and that the deceased, Amitbhai, was running a hair-cutting salon but was also allegedly involved in IPL betting for a considerable period. It is submitted that the deceased and his wife were living separately and had ongoing matrimonial disputes even before the incident. Further, the deceased had financial dealings with several persons and had earlier submitted an application mentioning the names of about 13–14 persons. The applicant's name was not mentioned in that application.

6.2 The learned advocate for the applicants submitted that although the deceased had taken some amount from the applicant in 2011–2012 and repaid it, there was no subsequent financial transaction between them. The applicant alleges that the deceased himself approached various persons for financial assistance and subsequently, suffered losses in IPL betting. It is submitted that deceased's father had also committed suicide, allegedly due to family disputes.

6.3 It is further submitted that essential ingredients of abetment of suicide under Sections 107 and 306 IPC are absent. The learned advocate would submit that for an offence under Section 306 IPC, there must be instigation, conspiracy, or intentional aid as contemplated under Section 107 IPC. Mere quarrels, disputes, or allegations of harassment are not by themselves sufficient unless they amount to abetment. It is stated that there must be some positive, active and intentional act of instigation or aid which has a proximate connection with the suicide. It is submitted that people react differently to similar circumstances. Therefore, merely because a person takes the extreme step of suicide due to his own emotional or personal difficulties, Section 306 IPC cannot automatically be invoked against another person.

6.4 The learned advocate submits that prosecution under Section 306 IPC requires material showing direct or proximate instigation or intentional aid, leaving the deceased with no reasonable alternative but to commit suicide.

6.5 So far as Section 386 IPC is concerned, it is contended that the facts stated in the FIR do not disclose the essential ingredients of Section 386 IPC (extortion by putting a person in fear of death or grievous hurt).

6.6 Thus, eventually, it is the case of the applicant that the FIR does not disclose the necessary ingredients of Sections 306 or 386

IPC, and therefore the criminal proceedings against the applicant deserve to be quashed.

6.7 It is submitted that the *de facto* complainant has filed an affidavit, which is on record, to the effect that no grievance is survived between them and that, she has no objection if the complaint is quashed, however, later on she resiled.

7. <u>Submissions on behalf of the applicant in Criminal Misc. Application No. 6389 of 2018</u>:

7.1 It is submitted that the applicant is innocent and that, the FIR does not disclose the ingredients of offences under Sections 306, 386 and 114 IPC, or Sections 5, 40 and 42 of the Money-Lenders Act.

7.2 It is submitted that the alleged incidents occurred from August 2017 to 09.03.2018, but the FIR was lodged belatedly. Although an earlier application had allegedly been submitted, no FIR was registered at that time. It is submitted that the applicant is, subsequently, falsely implicated after the deceased committed suicide.

7.3 The learned advocate would submit that the applicant merely acted as a mediator in a transaction whereby the deceased borrowed money from Bhupat Shiyaliya, who was the applicant's nephew. When deceased failed to repay the amount, Bhupat

initiated proceedings under Section 138 of the Negotiable Instruments Act.

7.4 It is further submitted that deceased had initially started a construction business with his friend Kalpeshbhai. After suffering losses, he allegedly borrowed money from several persons and was unable to repay the debts. According to the applicant, these financial difficulties led the deceased to take the extreme step of suicide. He submitted the otherwise, the applicant had no direct or indirect role in the suicide. His alleged involvement was limited to acting as a mediator in a financial transaction. Therefore, his implication in the FIR is alleged to be an abuse of the process of law.

7.5 It is submitted that Section 306 IPC requires proof of abetment of suicide and that mere disputes or other circumstances, without evidence of instigation or intentional aid, are insufficient. He submitted that an offence under Section 306 IPC can arise only where the ingredients of abetment under Section 107 IPC are established. Section 107 IPC contemplates abetment through instigation, conspiracy followed by an act/illegal omission, or intentional aid. It is submitted that none of these ingredients is disclosed against the applicant. The learned advocate submitted that as per settled law, there must be an active, positive and intentional act having a proximate connection with the suicide. Mere circumstances, financial difficulties, or emotional reactions of

the deceased cannot by themselves establish abetment. It is also submitted that different persons may react differently to the same circumstances and that Section 306 requires material showing instigation or intentional aid.

7.6 The learned advocate would further submit that the prosecution must show that the accused intended to instigate or aid the deceased and that such conduct was sufficiently connected with the suicide. In the absence of such material, Section 306 IPC cannot be sustained.

7.7 Moreover, it is submitted that the FIR does not disclose the necessary ingredients of Sections 386 and 114 IPC or Sections 5, 40 and 42 of the Money-Lenders Act against the applicant.

7.8 It is submitted that the deceased was facing independent financial and personal difficulties, that the applicant merely acted as a mediator, and that there is no material showing instigation, conspiracy or intentional aid on his part. Consequently, the proceedings against him are alleged to constitute an abuse of the process of law and are sought to be quashed.

7.9 Last but not the least, it is submitted that the *de facto* complainant has filed an affidavit, which is on record, to the effect that no grievance is survived between them and that, she has no objection if the complaint is quashed, however, later on she resiled.

8. *Conversely*, learned Additional Public Prosecutor for the respondent - State and learned advocate for the *de facto* complainant would submit that:

8.1 That since the Charge-sheet has been filed, the applicants have an alternative efficacious remedy of preferring a discharge application, since the scope of exercising powers under Section 482 of the Code is very narrow. Having made a *prima facie* case, the present applications deserve to be dismissed.

8.2 It is submitted that the deceased has given statement before the concerned police officer in the presence of a witness, which can be termed as Suicide Note, wherein, it is categorically stated that on account of harassment of the persons from whom he had taken money on interest, he fed away. It is submitted that names of the persons from whom he had taken money are also mentioned and accordingly, when there is *prima facie* gross case against the applicants, this Court may not interfere.

8.3 It is further submitted that the contention raised by the learned advocate for the applicants requires a full-fledged trial and can be tested only on the basis of the evidence led before the trial.

8.4 The learned advocates for the respondents further submits that the applicants are the persons having criminal antecedents involving offences of a similar nature. It is further contended that

such antecedents, coupled with the material collected during the course of investigation, *prima facie* substantiate the allegations levelled against the applicants and, therefore, no case is made out for the exercise of the inherent jurisdiction of this Court to quash the impugned FIR or the consequential criminal proceedings.

8.5 The learned advocate for the respondent No. 2 as well as the learned Additional Public Prosecutor for the respondent – State submitted that as per the settled law, inherent powers under Section 482 of the Code should be used sparingly and with a view to curb the abuse of process of law. It is submitted that in the case on hand, a *prima facie* case is made out against the applicants and hence, they requested that it is ultimately a matter of trial after which, the truth could be churned out and hence, it is requested not to entertain these applications.

9. Heard, the learned advocates for the respective parties and perused the material on record.

9.1 At the outset, it is well-settled that the jurisdiction under Section 482 of the Code is to be exercised sparingly and with circumspection to prevent the abuse of the process of any court or otherwise to secure the ends of justice. In ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335***, the Hon'ble Supreme Court crystallised seven illustrative categories where inherent powers can be exercised to quash criminal proceedings. The relevant

portion of Paragraph 102 reads as under:

> *"(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 ins the F.I.R. and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.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 the 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 S.155(2) of the Code.*
>
> *(5) Whether, the allegations made in the F.I.R. 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/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 malafide 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."

9.2 In the present case, the dispute essentially originates from financial transactions wherein the deceased had borrowed money on interest from the applicants and other persons. Upon default or delay in repayment, the applicants along with other lenders allegedly demanded the return of the principal alongside high interest rates, leading to verbal disputes and aggressive recovery attempts, which ultimately resulted in the tragic suicide of the deceased.

9.3 To attract the offence of abetment of suicide under Section 306 of the IPC, the prosecution must satisfy the essential ingredients of "abetment" as defined under Section 107 of the IPC. There must be an active, positive, and intentional act of instigation, conspiracy, or intentional aid with a direct nexus and proximity to the act of suicide. Harassment or persistent demands for loan recovery, without a specific *mens rea* (guilty mind) to drive the person to end their life, does not automatically constitute abetment.

9.4 In ***Abhinav Mohan Delkar v. State of Maharashtra, (2026) 6 SCC 233***, the Hon'ble Supreme Court observed:

> ***"25. What comes out essentially from the various decisions herein before cited is that, even if there is allegation of constant harassment, continued over a long period; to bring***

in the ingredients of Section 306 read with Section 107, still there has to be a proximate prior act to clearly find that the suicide was the direct consequence of such continuous harassment, the last proximate incident having finally driven the subject to the extreme act of taking one's life. Figuratively, 'the straw that broke the camel's back'; that final event, in a series, that occasioned a larger, sudden impact resulting in the unpredictable act of suicide. What drove the victim to that extreme act, often depends on individual predilections; but whether it is goaded, definitively and demonstrably, by a particular act of another, is the test to find mens rea. Merely because the victim was continuously harassed and at one point, he or she succumbed to the extreme act of taking his life cannot by itself result in finding a positive instigation constituting abetment. Mens rea cannot be gleaned merely by what goes on in the mind of the victim.

26. ***The victim may have felt that there was no alternative or option, but to take his life, because of what another person did or said; which cannot lead to a finding of mens rea and resultant abetment on that other person. What constitutes mens rea is the intention and purpose of the alleged perpetrator as discernible from the conscious acts or words and the attendant circumstances, which in all probability could lead to such an end. The real intention of the accused and whether he intended by his action to at least possibly drive the victim to suicide, is the sure test. Did the thought of goading the victim to suicide occur in the mind of the accused or whether it can be inferred from the facts and circumstances arising in the case, as the true test of mens rea would depend on the facts of each case. The social status, the community setting, the relationship between the parties and other myriad factors would distinguish one case from another. However harsh or severe the harassment, unless there is a conscious deliberate intention, mens rea, to drive another person to suicidal death, there cannot be a finding of abetment under Section 306***.

> ***27. We have already seen that even a rebuke to "go, kill yourself"; often a rustic expression against distasteful conduct, cannot by itself be found to have the ingredients to charge an offence of abetment to suicide. There is no uniformity in how different individuals respond and react under pressure. Many stand up, some fight back, a few runaway and certain people crumble and at times take the extreme step of suicide. To put the blame on the pressure imposed and the person responsible for it, at all times, without something more to clearly discern an intention, would not be the proper application of the penal provisions under Section 306****."*
>
> ***(emphasis supplied)***

9.5 Applying these principles to the facts at hand, even if it is assumed that the applicants exerted severe financial pressure or demanded exorbitant interest, there is no proximate prior act demonstrating a deliberate intent (*mens rea*) on their part to force the deceased to commit suicide. The reaction of an individual under financial distress cannot be solely attributed to the lenders in the absence of a positive instigation directly triggering the suicide.

9.6 With respect to the offence under Section 386 of the IPC (extortion by putting a person in fear of death or grievous hurt), it is necessary to examine the definition of "Extortion" under Section 383 of the IPC:

> *"Section 383. Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver*

to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits extortion."

9.7 The essential ingredient of extortion is that the victim must be dishonestly induced to deliver property or valuable security while being put in fear of injury. In the present case, the signed blank cheques and stamp paper were delivered as collateral/security at the time of procuring the loans. There is no allegation in the FIR that the deceased was put in fear of death or grievous hurt at the time these documents were handed over. The subsequent dishonor of cheques or issuance of legal notices under Section 138 of the Negotiable Instruments Act, 1881, does not convert a loan recovery dispute into the criminal offence of extortion under Section 386 of the IPC.

9.8 Regarding the allegations under Sections 5, 40, and 42 of The Gujarat Money-Lenders Act, 2011, except for vague oral assertions in the FIR, the record contains no documentary proof, banking statements, or financial records demonstrating specific extortionate interest payments made by the deceased to the applicants, rendering these statutory claims unsubstantiated.

9.9 A perusal of the Suicide Note of the deceased placed on record reveals that it contains only general references to financial stress, along with names and phone numbers of creditors. It lacks specific details regarding any direct overt act, threat, or immediate

provocation committed by the applicants near the time of the incident. Furthermore, against the applicant in Criminal Misc. Application No. 6657 of 2018, the last transaction took place as far back as 2011–2012, showing a complete lack of proximity to the incident in 2018.

9.10 As to the contention regarding criminal antecedents, it is settled law that past antecedents alone cannot replace the requirement of establishing essential statutory ingredients of the alleged offences in the present FIR. Moreover, the de facto complainant has filed affidavits on record stating that the dispute was personal in nature, had been amicably resolved through family intervention, and that she has no objection to the quashing of the proceedings.

10. On a holistic evaluation of the Charge-sheet papers and the FIR, this Court finds that continuing the criminal prosecution against the applicants would constitute a clear abuse of the process of law. The present case falls within parameters (1), (3), (5), and (7) laid down by the Hon'ble Supreme Court in *Bhajan Lal's* case.

11. *In fine*, these applications succeed and are accordingly, allowed. The First Information Report registered against the applicants, referred in Paragraph 2 above, Charge-sheet and all consequential criminal proceedings arising therefrom, are hereby quashed and set aside *qua* the applicants.

12. Rule is made absolute, accordingly. **Direct service** is permitted.

[P. M. Raval, J.]

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