

**IN THE HIGH COURT OF MADHYA PRADESH****AT INDORE****BEFORE****HON'BLE SHRI JUSTICE SUBODH ABHYANKAR****ON THE 13<sup>th</sup> OF FEBRUARY, 2024****MISC. CRIMINAL CASE No. 17305 of 2023****BETWEEN:-**

**SHYAM MALPANI S/O SHRI R KMALPANI,  
AGED ABOUT 62 YEARS, OCCUPATION:  
CHARTED ACCOUNTANT 701  
LOKHANDWALA COMPLEX. ANDHERI W  
MUMBAI (MAHARASHTRA)**

**.....APPLICANT**

***SHRI S.K.VYAS, SENIOR ADVOCATE ALONG WITH SHRI ANIRUDDHA  
GOKHALE, ADVOCATE***

**AND**

- THE STATE OF MADHYA PRADESH  
STATION HOUSE OFFICER THROUGH**
- 1. POLICE STATION LASUDIYA DISTRICT  
INDORE. (MADHYA PRADESH)  
DIVYA MALPANI @ DIVYA MALU W/O  
SAURABH MALPANI FLAT NO. 1403,**
  - 2. BUILDING KRISTA 1, APOLLO D.B. CITY,  
NIPANIYA, INDORE, LASUDIYA, INDORE  
(MADHYA PRADESH)**

**.....RESPONDENTS**

***SHRI SURENDRA GUPTA, GOVT. ADVOCATE FOR RESPONDENT NO.1  
SHRI A.S.GRAG, SENIOR ADVOCATE ALONG WITH SHRI RAUNAK  
CHOUKSE, ADVOCATE FOR RESPONDENT NO.2***

.....  
***Reserved on : 10.01.2023***

***Pronounced on : 13.02.2024***

.....

***This application coming on for order this day, the court passed the following:***

**ORDER**

1. This petition has been filed by the petitioner under Section 482 of the Criminal Procedure Code, 1973 for quashing the FIR lodged at Crime No.1421/2022, for the offences punishable under Section 452, 506 and 34 of the IPC registered at police station Lasudiya, and the subsequent charge sheet.

2. In brief, the facts of the case is that the marriage of petitioner's son Sourabh was solemnized on 18.1.2014 with Divya Malpani, the respondent no.2, who is also the complainant in the present case. After the marriage, respondent no.2/complainant, and her husband started living in Canada since 2014 only, however, a dispute arose between the parties, and on 27.1.2022, the complainant travelled along with her minor daughter to India, and informed to the son of the petitioner that she would not be returning back to Canada.

3. Faced with the aforesaid situation, the petitioner's son Sourabh on 10.6.2022 moved an application before the Canadian Court at Ontario, for securing custody of their minor daughter. Whereas, on 20.6.2022, the complainant filed a divorce petition at Family Court at Indore. On 21.6.2022, the complainant marked her presence before the Canadian Court through her counsel and filed a reply before the Canadian Court on 5.7.2022. On 13.7.2022, the Canadian Court ordered the complainant to produce the minor daughter to Canada within 30 days, and as the complainant did not

comply with the aforesaid order passed by the Canadian Court, the lawyer of the petitioner's son advised him to file a contempt petition. Consequently, a contempt petition was also filed by the petitioner's son in the Canadian Court at Ontario in the month of September, 2022 against the complainant. On 8.9.2022, the lawyer of petitioner's son sent an e-mail to him instructing him to serve the process of contempt to the complainant, and as the petitioner's son was not residing at Indore, the petitioner, along with his lawyer Satyavijay Manthan, went to the house of the complainant at around 2.20 PM on 12.9.2022 and served the notice on her. However, at around 8.00 PM on 12.9.2022 itself, the present FIR was lodged by the complainant against the petitioner and an unknown person alleging criminal trespass against them.

4. Shri S.K.Vyas, learned senior counsel for the petitioner has submitted that a matrimonial dispute is going on between the petitioner's son and the complainant in which the Canadian Court has drawn a contempt against the complainant, and a cost of 17,000 Canadian Dollor (Cad) (Rs.10,20,000/-) has been imposed on the complainant by the Canadian Court, and she has also been directed to appear before the said Court, of which, the notice was served by the petitioner and his lawyer to the complainant on 12.09.2022, at her house. However, taking advantage of the aforesaid situation, *i.e.*, of the petitioner's presence in the house of the complainant, the aforesaid FIR has been lodged with a view to wreck vengeance

against the petitioner, who is 62 years old reputed Chartered Accountant.

5. Shri Vyas has also submitted that the FIR has been lodged with *malafide* intention to embroil the petitioner in the criminal litigation, and has also drawn attention of this Court to the seizure memo dated 16.9.2022, in which, along with a pan-drive and photographs, the complainant has also got recovered a paper which was alleged to be thrust by the petitioner in the hands of the complainant at her apartment. Shri Vyas, has also submitted that this fact has been mentioned by the complainant herself in her statement recorded under Section 161 of the Cr.P.C. It is also submitted that the aforesaid notice is also the part and parcel of the charge sheet. Thus, it is submitted that no case as alleged by the complainant is made out, and it was absolutely not a case where the petitioner had gone to the house of the complainant with an intention to commit any offence, or had entered into the house of the complainant with any criminal intention which is also apparent from the fact that the contempt notice issued by the Canadian Court has also been seized at the instance of the complainant which, according to the complainant herself, was thrust in her hand by the petitioner. It is submitted that only because of the acrimonious relationship between the parties, the FIR has been lodged by the complainant which deserves to be quashed.

6. In support of his submissions, that there was no intention of the petitioner to commit an offence of trespass, Shri Vyas has placed reliance upon the decision rendered by the **Allahabad High Court in the case of Man Singh Vs. State reported as 1979 C.R.L.J 1433** wherein, paragraph 11 reads as under :-

“11. It is needless to say that in order to establish that the entry on the property was with intent annoy, intimidate or insult, it is necessary for the court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry and it is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult and that this likely consequence was known to the person entering. In every case where entry causes annoyance or insult it cannot be said to be actuated by the intention to cause the said result. There is distinction between knowledge and intention and that distinction must be kept in mind in deciding whether in a particular case entry was with requisite intention. The said intention has always to be gathered from the circumstances of the case but it is not possible to accede to the argument that the likely consequences of the Act and its possible knowledge must necessarily import the corresponding intention. This view is in accord with the principle laid down in the case of Punjab National Bank Ltd. v. All India Punjab National Bank Employees Federation and Smt. Mathri v. State of Punjab . In this case no satisfactory evidence was adduced to prove the requisite intention and in its absence the revisionist's conviction under Section 447, I.P.C. cannot be sustained. “

7. In support of his submission that the FIR can be quashed by this Court while exercising its jurisdiction under Section 482 of Cr.P.C, Shri Vyas has also relied upon a recent judgment of the Supreme Court in the case of **Mahmood Ali VS. State of UP**

passed in **CRA.No.2341/2023** dated **8.8.2023**. wherein paragraph **12** reads as under:-

“12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

(emphasis supplied)

8. On the other hand, the petition has been vehemently opposed by Shri Garg, learned senior counsel appearing for the respondent no.2, and it is submitted that the charge sheet has already been filed and the complainant is consistent in her stand that the petitioner had come to her house. It is further submitted that CCTV footage of the incident has also been captured and has also been filed along with the charge sheet. It is also submitted that there was no occasion of the petitioner to come to the house of the complainant specially when the aforesaid notice could very well have been served on the counsel appearing for the respondent no.2/complainant, and also on respondent no.2, in the High Court premises itself, both of whom were present in the Court on 12.9.2022 in a case M.P.3546/2022, arising out of family Court order between the same parties.

9. Counsel for the respondent no.2 has also submitted that the fact that the petitioner could have served the notice to the lawyer appearing for respondent no.2/Complainant and also to respondent no.2 in the Court itself which is also substantiated by the Email dated 8.9.2022 sent to the son of the petitioner, and also by the affidavit filed before the Canadian Court by the other accused, who is an advocate, and who had accompanied the petitioner to the complainant's home. In the format of the affidavit, it is also provided that the said notice could also be served on the counsel for the respondent no.2. It is also submitted that this Court cannot appreciate the documents and the contents therein at this stage and



the parties will have ample opportunity to contest the matter to lead evidence before the trial court. It is also submitted that the petitioner's contention that he had gone to the house of the complainant only to identify her is also false as her picture as well her passport copies have been filed in various proceedings.

10. In support of his submission, counsel for the respondent no.2 has placed reliance upon the judgments passed by the Hon'ble Supreme Court in the case of **CBI Vs. Aryan Singh reported in AIR 2023 SC (Criminal) 705** and in the case of **Priti Saraf Vs. State of NCT of Delhi reported in AIR ONLINE 2021 SC 148**.

11. It is also submitted by Shri Garg that a case under the Prevention of Money Laundering Act,2002 (PMLA) is also pending against the petitioner.

12. In rebuttal, Shri Vyas, learned senior counsel for the petitioner has submitted that no lawyer of respondent no.2 was present before the Court, who had represented her in the Canadian Court.

13. Heard, learned senior counsel for the parties and perused the record/case diary.

14. From the record, this court finds that a bitter legal battle is going on between the parties, as the son of the petitioner happens to be the husband of the complainant, and the custody of child is also involved, who is presently with the complainant/wife.

15. While the petitioner has filed the child's custody case in the court at Ontario, Canada Family Court, the complainant has filed a Divorce Petition Case No.1335/2022 in the Family court at Indore. Admittedly, a contempt proceeding has already been issued by the Canadian Court against the respondent/complainant Divya Malpani in which a Notice dated 08.09.2022 was issued to her which has also been seized by the police from the complainant. A perusal of the said notice shows that the Canadian court has ordered the complainant to be present at 361 University Avenue Toronto ON M5G 1T3 on 20.09.2022 at 10.00 am, and to remain until the Court has dealt with the case. Thus, there is a clear order against the complainant to be present before the Court. And apparently, the said Notice cannot be said to be of the complainant's liking which has been served on her by the petitioner who happens to be the father-in-law of the complainant.

16. If this entire episode of the petitioner going to the house of the complainant along with his lawyer to serve the notice issued by a Canadian court is viewed objectively, this court finds that the petitioner and his lawyer cannot be saddled with the intention of criminal trespass. It may be that as the notice was not to the liking of the complainant, there might be some heated arguments but that cannot be held to be an intention to commit the offence of criminal trespass.

17. Thus, if the facts of the case on hand are tested on the anvil of the decision of the Supreme Court in the case of **Mahmood Ali (supra)**, in the overall facts and circumstances of the case, this court is of the considered opinion that even if the Email sent to the son of the petitioner had the instructions that the notice may be served to the complainant or to her counsel, the decision of the petitioner, who himself is a Chartered Accountant, to serve it on the complainant herself cannot be said to be tainted with any *malafide* intentions specially when he was also accompanied by his lawyer. It is apparent that the lodging of the FIR after approximately six hours was clearly an afterthought to wreck vengeance against the petitioner, who happens to be the father-in-law of the complainant. Thus, this court is of the considered opinion that continuance of the present criminal proceedings would only be a sheer misuse of the court and its valuable time which should be consumed in some worthy cause only.

18. Resultantly, **the petition stands *allowed*, the FIR lodged at Crime No.1421/2022, the charge sheet dated 12/11/2022 and all the subsequent proceedings so far as the present petitioner is concerned, *are hereby quashed*.**

(SUBODH ABHYANKAR)

JUDGE

das

