6. Learned advocate for the applicant has submitted that the applicant has been falsely implicated in the complaint, as alleged, since it is undisputed fact that the present applicant has already resigned from the Directorship of the original Accused No. 1 company since 26.10.2010 after compliance of all formalities including filling Form No. 32 and hence, the impugned complaint is required to be quashed. Learned advocate for the applicant has submitted that as noted hereinabove in the order dated 04.12.2018 the present applicant vide communication dated 26.10.2010 had resigned from the directorship of the company as well as her resignation has also been accepted by the company. He has further submitted that Form No. 32 filled in by the company, wherein it is specifically stated that the present applicant is not associated with the company w.e.f. 26.10.2010.

7. Thus, it is an undisputed fact that the present applicant ceased to be the Director of the company since 26.10.2010, hence, she cannot be implicated for the alleged offence of issuing the cheques in 2012. It appears that the trial would be futile and further continuance of the proceedings pursuant to the impugned FIR would amount to abuse of process of law and hence, to secure the ends of justice, the impugned complaint is required to be quashed and set aside in exercise of powers conferred under Section 482 of the Code.

8. In view of the above, this application is allowed and the complaint filed before Additional Chief Judicial Magistrate, Surat vide Criminal Case No. 28703 of 2013 along with all subsequent proceedings thereto are hereby ordered to be quashed. Accordingly, Rule is made absolute. Direct service is permitted.

Result:- Application allowed.

ABC 2019 (I) 231 GUJ

ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(A.S. Supehia, J.)

R/Criminal Misc. Application No. 7494 Of 2015

Decided on 5 December, 2018

BHUPENDRABHAI NATWARLAL SHAH ***- Appellant(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered:- ***Code of Criminal Procedure, 1973 — Section 482 — Quashing of FIR — Indian Penal Code, 1860 —***

Sections 506(2), 294(2) & 509 — FIR under — Previous history — No previous allegation— not the case that she was mis-treated or abused by the applicant in past— Civil suit filed by the complainant against the sister & brother in law of the applicant on his behalf, withdrawal by the applicant — Held, it appears that the impugned F.I.R. has been lodged by the complainant as a counter-blast — in order to restrict the applicant from leaving India— FIR Quashed. (Para 7)

Facts:- *The applicant was living in USA since long. The complainant got married with the son of the applicant who passed away in an accident thereafter. The mother of the applicant had given a General Power of Attorney in the name of the complainant and the present petitioner. The complainant instituted a civil suit in the name of the petitioner against his sister and brother-in-law for raising a claim in the suit property, realizing this mother of the applicant revoked the power of attorney qua the complainant. The applicant also filed an application for withdrawal of the suit and for further declaration that the present complainant has no authority to institute the suit. Thereafter, the present applicant visited India and the impugned F.I.R. was lodged by the complainant. It was held by the honourable High Court that it appears that the impugned F.I.R. has been lodged by the complainant as a counter-blast in order to restrict the applicant from leaving India. The FIR was quashed.*

Held:- It is not in dispute that the applicant has been living in USA since 1997. It is also not in dispute that the complainant got married with the son of the applicant and the son of the applicant (i.e. husband of respondent No.2) passed away in an accident in 2007. The documents on record further reveal that the mother of the applicant had in fact given a General Power of Attorney in the name of the complainant and the present petitioner. The same was revoked on 16.11.2007 by his mother qua the complainant. When the applicant realized that the complainant had instituted Regular Civil Suit No.1001 of 2007 in his name against his sister and brother-in-law for raising a claim in the suit property, he filed an application for withdrawal of the suit and for further declaration that the present complainant has no authority to institute the suit. It also appears that thereafter, the present applicant visited India and the impugned F.I.R. has been lodged by the complainant. (Para-7)

Counsel:- ***For Appellant(s):*** *Mr. Abhisst K Thaker, Adv.*

For Respondent(s): *Ms. Moxa Thakker, Mr Jigar P Raval, Adv.*

Cases Referred:-

a *State of Haryana Vs. Bhajanlal & Ors., AIR 1992 S.C. 604, (Para-10)*

JUDGMENT

A.S. SUPEHIA, J.: - 1. By way of the present writ application, the applicant - original accused seeks quashing of First Information Report (F.I.R.) being C.R. No.II-154 of 2015 registered with Raopura Police Station, Vadodara City, Dist. Vadodara for the offences punishable under sections 506(2), 294(2) and 509 of the Indian Penal Code, 1860 (IPC) and the proceedings arising therefrom.

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

2.1. Applicant is the father-in-law of respondent No.2 - the original complainant and since 1997 the applicant is at the United States of America (USA) and his son (since deceased) and the daughter-in-law i.e. the present respondent No.2 were living in India. The son of the applicant passed away in 2007 and since then respondent No.2 is staying with her parents at Ahmedabad and the applicant is staying at USA.

2.2. Thereafter, respondent No.2 instituted Regular Civil Suit No.1001 of 2007 against the sister and brother-in-law of the applicant based on a General Power of Attorney (POA) of the applicant's mother. As soon as the applicant's mother came to know that based on the POA a suit qua the property of the applicant is instituted by respondent No.2 (daughter-in-law) against his sister and brother-in-law, the applicant revoked the POA. The applicant, in the month of April, 2015 also gave an application stating that he wants to withdraw the aforesaid suit.

2.3. Thereafter, the impugned F.I.R. being C.R. No.II-154 of 2015 has been lodged by respondent No.2 on 17.04.2015, which is a counter-blast to the fact that respondent No.2 did not get the desired result in Regular Civil Suit No.1001 of 2007, which is qua the property of the applicant and the said property is lent out to the sister and brother-in-law of the applicant.

3. Learned advocate appearing on behalf of the applicant has submitted that the allegations made in the F.I.R. are to the effect that the applicant misbehaved with the complainant after the mediation proceedings in the aforesaid suit failed. He has submitted that the

complainant in the F.I.R. clearly states that the applicant has used unparliamentary language against the complainant. He has submitted that mediation sittings were organized on three dates i.e. 08.04.2015, 15.04.2015 and 17.04.2015 and on the last day i.e. on 17.04.2015 the said incident has happened. He has submitted that, as per the complainant, the incident had allegedly taken place around 4:00 p.m. and that the impugned F.I.R. has been lodged at around 9:15 p.m. He has submitted that the impugned F.I.R. is nothing but an afterthought with a view to impound the passport of the applicant. Learned advocate has further submitted that the lawyers of both sides were also present after the mediation proceedings and also large number of people were there and hence, it is improbable to believe that such an incident of misbehaviour with the complainant by the applicant would have taken place.

3.1. Learned advocate for the applicant has submitted that the attempt behind registration of the impugned F.I.R. is to see to it that the applicant is not allowed to travel back to USA and that his passport is impounded and looking to his ill-health, if he does not reach back on time to USA, the same can be disastrous for the applicant.

3.2. Learned advocate has submitted that the complainant had also filed an application before the concerned Court at Vadodara for impounding the passport of the applicant and that the said application is withdrawn by the complainant as the court was not inclined to entertain the application.

3.3. Learned advocate has also submitted that the dispute between the applicant and the complainant qua the immovable property, which is the subject matter of Regular Civil Suit No.1001 of 2007 and the impugned F.I.R. is nothing but abuse of process of law. He has submitted that with a view to achieve the prayer in the suit, by taking a criminal route, the complainant has lodged the impugned F.I.R. He has further submitted that the complainant has demanded a sum of Rs.3,00,000/- from the applicant and the said fact can be reflected from the application given by the complainant before the concerned court at Vadodara.

3.4. Learned advocate for the applicant has submitted that the impugned F.I.R. does not disclose any criminal / cognizable offences, as alleged. He has submitted that the impugned F.I.R. is lodged with an oblique and ulterior motive with a view to pressurize the

applicant. He has submitted that respondent No.2 has suppressed the material fact that the applicant is residing in USA since 1997 and that the complainant is residing in India with her parents since 2007. Lastly, the learned advocate has submitted that the impugned F.I.R. is nothing else but sheer abuse of process of law and, therefore, the same deserves to be quashed and set aside.

4. Learned advocate Ms. Shachi Mathur 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* offences are made out against the applicant.

5. Maintaining the aforesaid submissions of the learned advocate for the complainant, the learned Additional Public Prosecutor for the respondent - State has also submitted that *prima facie* the impugned F.I.R. reflects that the offences against the applicant 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.

6. Heard the learned advocates appearing for the respective parties.

7. It is not in dispute that the applicant has been living in USA since 1997. It is also not in dispute that the complainant got married with the son of the applicant and the son of the applicant (i.e. husband of respondent No.2) passed away in an accident in 2007. The documents on record further reveal that the mother of the applicant had in fact given a General Power of Attorney in the name of the complainant and the present petitioner. The same was revoked on 16.11.2007 by his mother qua the complainant. When the applicant realized that the complainant had instituted Regular Civil Suit No.1001 of 2007 in his name against his sister and brother-in-law for raising a claim in the suit property, he filed an application for withdrawal of the suit and for further declaration that the present complainant has no authority to institute the suit. It also appears that thereafter, the present applicant visited India and the impugned F.I.R. has been lodged by the complainant.

8. It also appears that the complainant has also filed an application for impounding the passport of the applicant on 18.04.2015 before Judicial Magistrate, First Class, Vadodara. However, the same was rejected as withdrawn. It is also asserted by the learned advocate appearing on behalf of the applicant that prior

to the alleged incident referred to in the impugned F.I.R., no allegations or complaints have been made by the complainant against him or his family. Such submission is not controverted by the complainant.

9. Thus, the unparliamentary language made by the complainant about the statement made by the applicant raising doubt about father of her son appears to be vague since it is not in dispute that prior to the lodging of the impugned F.I.R., the complainant had never alleged that the applicant had ever made such allegation regarding her character. It is also not the case of the complainant that she was mis-treated or abused by the applicant in past. Thus, it appears that the impugned F.I.R. has been lodged by the complainant as a counter-blast to the application made by the present petitioner for withdrawal of the suit and for declaration that the complainant had no authority to institute the suit. The POA was withdrawn by the mother of the applicant apropos the complainant only and not of the applicant. When the applicant visited India, the complainant has lodged the impugned F.I.R. in order to restrict the applicant from leaving India.

10. 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 court and only with a view to sole purpose of harassing the applicant. The present case falls under the seven categories laid down by the Apex Court in the case of ***State of Haryana Vs. Bhajanlal & Ors., AIR 1992 S.C. 604***.

11. Resultantly, the present writ application is allowed. The impugned F.I.R. being C.R. No.II-154 of 2015 registered with Raopura Police Station, Vadodara City, Dist. Vadodara as well as all other consequential proceedings arising from the impugned F.I.R. are hereby quashed and set aside. RULE is made absolute.

Result:- Writ application allowed.