

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE**  
**FIR/ORDER) NO. 18202 of 2015**

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SHIVLAL JERAMBHAI PADIA....Applicant(s)

Versus

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

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Appearance:

MR HRIDAY BUCH, ADVOCATE for the Applicant(s) No. 1  
HCLS COMMITTEE, ADVOCATE for the Respondent(s) No. 2  
MS.YOGINI H UPADHYAY, ADVOCATE for the Respondent(s) No. 2  
MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

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

**Date : 15/02/2017**  
**ORAL ORDER**

1. By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant-original accused, aged 90 years at the relevant point time, seeks to invoke the inherent powers of this Court praying for quashing of the F.I.R. being C.R. No.I-4 of 2015 filed before the Bhavnagar City Mahila Police Station, District-Bhavnagar, for the offence punishable under Sections-376, 342 and 506(2) of the I.P.C.

2. The case of the first informant may be summarized as under:-

2.1 The first informant was serving as a Warden in the G.K.P. Ashra Kanya Chhatralaya, Bhavnagar. The hostel is being managed by a Charitable Trust. The applicant-accused is the President of the said Trust. In the FIR, it has been alleged that on 14/06/2015, the first informant was called by the applicant-accused at his bungalow to talk

about some Government Employment for the first informant. According to the first informant, when she reached the bungalow of the accused, he was all alone in the house. None of his family members were present. The accused pretended to be tired and therefore, asked the first informant to come to his bedroom, which had an air-condition. It is alleged that in the bedroom, the accused committed rape. The accused thereafter threatened her with dire consequences if she would disclose to anyone about the incident. In such circumstances, the first informant kept quiet for two months. On 20/08/2015, she mustered the courage to go to the police station and lodged the FIR. This is the case of the first informant.

3. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the first information report should be quashed.

4. I take notice of the following facts emerging from the papers of the investigation:-

(1) In the year 2015, the applicant-accused was 90 years of age.

(2) The trustees decided to terminate the services of the first informant as they found the conduct of the first informant improper and her work was also not found up to be satisfactory.

(3) The services of the first informant came to be terminated by the Board of Trustees vide order dated 25/06/2015.

5. It appears that soon after the registration of the FIR, the first informant was subjected to medical examination. The medical certificate dated 20/08/2015 issued by the Medical Officer, Sir T. General Hospital,

### Bhavanagar reveals the following:-

#### Identification Mark:

i) scar of approximately 10-12 cm on left forearm with puckering of stain on it.

ii) Mole on neck 4-5 cm from left sided ear lobule.

M/H – LMP: 28/7/15, 3-4 days (1½ – 2 months) irregular, moderah painless.

O/H : Married since 20 years. Separated from husband since 1 ½ year. 3D & E done / No still birth/ No normal delivery. Last intercourse with husband 1 ½ year back.

P/H. - left forearm had h/o insect bite followed by 2 sepsis & then incision & drainage done on 1997.

operative history on right leg in 2013 as pt. slipped from bathroom/ H/o rods & plates inserted at that time exact papers & operative detail not available.

General examination – oriented to time place & person. T-@, P-90, B.P. - 130/80mm

R.R. 16/ min, pupils – normal. Pt. Has taken bath, washed mouth, passed stool.

-Pt. wearing fresh cloths.

-Examination of injury – No injury found all over body.

Breast developed. No injury Mark – pubic & arailay hair present. P/A -soft

#### External genitalia.

labia Majara

labia Minara

fourchick

vulva

perineum

No injury Mark

No edema/redness/bruise/tear

Hymen – old tear

No fresh injury in form of dima congestion redness or any other injury.

P/s – No (tear/bleeding/discharge/edema/tenderness) in vagina & cervix.

P/o. - 2 finger PU done without pain.

Ut A/v

Normal siz

[indication for P/u – to rape out preg.]

ANUS – Normal

UPT – Negative

Ach

-UPT – Negative

-USG Abdo

Penis

-Psychiatric refer

-vctc refer

Opinion – possibility of sexual intercourse cannot be ruled out.

6. The accused was also subjected to medical examination after his arrest. In the history given before the doctor, he stated that the FIR was false and was lodged only with a view to seek vengeance because her services were terminated as a Warden of the hostel. The Medical Officer, Civil Hospital, Ahmedabad states as under:-

B/B/ P.C. B.No.1362 Navapara Mahila Police Station  
 A/H/o Rape – Accused.  
 Pt primary treated at Sir T. Hospital, Bhavnagar. All sample taken but sample of semen not available.  
 Pt. ref. for sample of semen collection and urologist opinion.  
 - written consent of pt. taken.  
 - thumb impression of pt. taken in case paper.  
 - I-mark of pt. written in case paper.  
 One trial was given but sample of semen not available.  
 Pt. ref. To urology test for expert opinion.  
 - S/B Dr. Shrenik J. Shah (Asso Prof. Urology)  
 A/H/o Rape 3 month back at Bhavnagar.  
 -H/o married – 3 son and 3 daughter.  
 - H/o erection -ve since 20 years  
 ejaculation -ve  
 - pt is on anti-platelet urag.  
 - H/o. HTN since 20 year  
 - No H/O DM/YB/Copp.  
 -H/o. TURP in 2005 at private hospital in Ahmedabad.  
 -H/o B/L cataract surgery in pvt. Hospital ahmedabad.  
 -H/o. Surgery for dis prolapse at pvt. Hospital bombay.  
 Ext. genital – NAD  
 Dr – Normal anal temp.  
 We have tried semen collection by electrovibratory three times but pt. is not possible. There was no erection and no ejaculation.

7. A team of doctors at the Civil Hospital tried to collect the semen sample by electrovibratory method for three times. It has been very specifically noted in the certificate that there was no erection or no ejaculation.

8. In the overall view of the matter, I am convinced that the FIR is false. The case falls within the categories 3, 5 and 6 of the decision of the Supreme Court in the case of *State of Haryana Vs. Bhajan Lal* reported in *AIR 1992 SC 604*.

In the FIR as well as in the statement of the prosecutorix recorded under Section-164 of the Cr.P.C., there are specific allegations that she was overpowered by the accused and was forcibly raped. These allegations stand falsified by the evidence on record.

9. In the result, this application is allowed. The F.I.R. being C.R. No.I-4 of 2015 filed before the Bhavnagar City Mahila Police Station, District-Bhavnagar, is hereby ordered to be quashed. Rule is made absolute. Direct service is permitted.

aruna

(J.B.PARDIWALA, J.)

