

(2023) 02 GUJ CK 0021

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 10912 Of 2014

Anilkumar Laxmanbhai Makwana & 3 Other(S)

APPELLANT

Vs

State Of Gujarat & 1 Other(S)

RESPONDENT

Date of Decision : 03-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 320, 482

Indian Penal Code, 1860 — Section 114, 294(A), 323, 498A, 506(2)

Citation : (2023) 02 GUJ CK 0021

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Kunal S Shah, Bhunesh C Rupera, Hardik Mehat

Final Decision : Allowed

Judgement

Gita Gopi, J

1. This petition has been filed under section 482 of the Code of Criminal Procedure for quashing and setting aside the FIR being C.R. No.I-11 of 2014 registered with Odhav Police Station, Dist.: Ahemdabad for offences punishable under section 498A, 323, 294(A), 506(2) and 114 of IPC, charge sheet no.53/2014 and the proceedings initiated in pursuance thereto.

2. Mr. Kunal S.Shah, learned advocate for the petitioners submitted that, the matrimonial dispute of the husband and wife have been settled and both have started staying together. He submits that they are having a son aged about 17 years and with their own efforts and intervention of the family members, they have now decided to continue with their matrimonial life. Mr. Shah submits that disputes is of private in nature. It was submitted that in the larger interest of the society, the impugned complaint may be quashed and set aside.

2.1 Learned advocate submitted that the Court may verify the said aspect from the original complainant - respondent no.2.

3. Mr. Bhunesh C.Rupera, learned advocate for the respondent no.2 – original complainant concurred with the factum of settlement of the dispute, as advanced by learned advocate Mr. Kunal Shah appearing for the petitioners.

4. The original complainant – respondent no.2 and the husband – petitioner no.1 are present before the Court. The Court verified the contents of the compromise with the original complainant – respondent no.2. She stated that disputes have been settled. The respondent no.2 - original complainant, affirmed about the execution of the Affidavit dated 18.01.2023, wherein it has been categorically stated that she has no grievance against the petitioners and that she has no objection to the quashment of the impugned first information report filed by her.

5. Mr. Hardik Mehta, learned Public Prosecutor, submitted that any First Information Report should be quashed in accordance with the guidelines of the Apex Court and the parameters laid down therein.

6. This Court has heard the learned advocates on both the sides and has perused the material on record. In the Affidavit dated 18.01.2023, filed by respondent no.2 - original complainant, it has been categorically averred that the dispute with the petitioners has been amicably resolved with their own efforts and intervention of the family members, and that the present settlement is arrived at without any coercion, force and undue influence.

7. Considering the principle laid down by the Apex Court in the case of Gian Singh v. State of Punjab and another reported in 2012 (10) SCC 303, the present matter would fall under the criteria laid down therein. In paragraph-61 of the said judgment, it has been observed thus:

"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victims family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving

such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

8. In case of *State of Haryana V. Bhajan Lal and others*, reported in AIR 1992 SC 604, the Apex Court formulated as many as seven categories of cases, wherein the extraordinary power under Section 482 could be exercised by the High Court to prevent abuse of process of the court. The Apex Court in the said case made the following observations:-

"8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given 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 channelised and inflexible guide in myriad kinds of cases wherein such power should be exercised:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted 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;

(d) 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 Section 155(2) of the Code;

(e) 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;

(f) 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;

(g) 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.”

9. In the present case, the dispute is a private and personal affair. The injury sustained does not involve any mental depravity nor amounts to a heinous crime. In view of the settlement arrived at between the parties, there exists no scope for any further proceeding in the matter. The continuance of proceedings would lead to wastage of precious judicial time as there would remain no possibility of any conviction in the case. Hence, the Court is of the opinion that this is a fit case where the inherent powers of the Court under section 482 of the Cr.P.C. could be exercised for securing the ends of justice.

10. In the result, the petition is allowed. The impugned FIR being C.R. No.I-11 of 2014 registered with Odhav Police Station, Dist.: Ahemdabad, charge sheet no.53/2014 and the proceedings initiated in pursuance thereof are quashed and set aside qua the present petitioners. Rule is made absolute. Direct service is permitted.