

(2013) 11 GUJ CK 0046
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 8684 of 2011

Dineshkumar Rasikbhai Chauhan and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Citation : (2013) 11 GUJ CK 0046

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : Mahendra U. Vora, s No. 1 - 3, for the Appellant; Chetan K. Pandya, Advocate for the Respondent(s) No. 2 and Mr. Alkesh Shah, APP. for the Respondent(s) No. 1, for the Respondent

Final Decision : Allowed

Judgement

R.M. Chhaya, J.—By way of this application u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code" for the sake of brevity) the applicants original accused have preferred this application for quashing F.I.R. registered as CR No. I-88 of 2011 with Deesa City Police Station for the offences under sections 363, 366, 379, 504, 506(2) and 120(b) of Indian Penal Code. The record indicates that the first informant respondent No. 2 is father of one Palakben Prabhubhai Prajapati. The record further reveals that Palakben Prabhubhai Prajapati married with one Vikramkumar Radhakrishna Varde. On bare reading of the F.I.R. it transpires that first informant-respondent No. 2 has alleged that the present applicants as well as Palakben and Vikramkumar have committed alleged offences and the first informant has also made allegations against the present applicants that they have abused and threatened the first informant-respondent No. 2. Mr. Mahendra U. Vora, learned Advocate for the applicants submitted that as such the allegations are not true and because of intervention of the elders of the society the applicants and the first informant - respondent No. 2 have amicably resolved the issue. Mr. Vora submitted that the first informant has filed affidavit dated 26.11.2013 i.e. today which indicates that

the parties have amicably resolved the issue and respondent No. 2 has also executed the affidavit dated 31.7.2013 stating that the first informant respondent No. 2 has no objection if the impugned F.I.R. is quashed.

2. Mr. Vora further submitted that in view of this development, during the pendency of this application before this Court, any further continuation of proceedings in pursuance to the impugned F.I.R. would result into harassment to the parties. Mr. Vora further submitted that as such Palakben as well as Vikramkumar have also preferred separate application for similar relief being Criminal Misc. Application No. 8207 of 2011 which is also being heard today along with this application. Mr. Vora submitted that in view of the fact that the parties have amicably resolved the issue which has arisen only because of some heated moments, having been resolved, the trial would be futile and continuation of proceedings in pursuance to the impugned F.I.R. would result into unnecessary harassment to the parties. Mr. Vora submitted that in view of the settlement having been arrived at between the parties the trial would be futile and same would amount to abuse of process of Court and law. Mr. Vora therefore submitted that this Court may be pleased to exercise inherent jurisdiction u/s 482 of the Code and allow the application and quash the F.I.R. qua the present applicants.

3. Mr. Chetan Pandya, learned Advocate for the original complainant reiterated the contentions which are raised by Mr. Vora for the applicants. Mr. Pandya has relied upon the affidavit which is filed today. Mr. Pandya has further identified Mr. Prabhubhai Manibhai Prajapati who is personally present in the Court. Mr. Pandya has also tendered photocopy of the election card to establish his identity. On inquiry by the Court Mr. Prabhubhai has stated that he has filed the affidavit and further stated that the parties have amicably settled the issue.

4. Mr. Alkesh Shah, learned APP. candidly submitted that in view of the settlement arrived at between the parties, this Court may pass appropriate order.

5. Considering the aforesaid, it is established from the record, that the parties have amicably resolved the issue which was predominantly of a domestic nature and therefore even though some of the offences are of non compoundable, as held by the Hon''ble Apex Court in the case of Gian Singh Vs. State of Punjab and Another, , this Court has jurisdiction to exercise its inherent jurisdiction u/s. 482 of the Code. The Hon''ble Apex Court in the case of Gian Singh (supra) has observed thus:

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers u/s 482. No precise and inflexible guidelines can also be provided.

57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power

of compounding of offences given to a court u/s 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc.; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R. if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

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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 u/s 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 F.I.R. may be exercised where the offender and 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 serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like 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 pre-dominantly civil flavour stand on 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, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put 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 wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

6. Having heard the learned Advocates appearing on behalf of the respective parties and considering the facts and circumstances arising out of the present application as well as considering the decisions rendered in the case of Madan Mohan Abbot Vs. State of Punjab, Nikhil Merchant Vs. Central Bureau of Investigation and Another, as well as in the case of Manoj Sharma Vs. State and Others, it appears that further continuation of criminal proceedings in relation to the impugned F.I.R. against the applicants-original accused would amount to unnecessary harassment to the applicants and trial would be futile and would also amount to abuse of process of law and court and hence to secure the ends of justice, the impugned F.I.R. registered as CR No. I-88 of 2011 with Deesa City Police Station for the offences under sections 363, 366, 379, 504, 506(2) and 120(b) of Indian Penal Code as well as all other consequential proceedings

arising out of the impugned F.I.R. are required to be quashed in exercise of power u/s 482 of the Code.

7. For the reasons stated hereinabove, the present application is allowed. The impugned F.I.R. registered as CR No. I-88 of 2011 with Deesa City Police Station as well as all other consequential proceedings arising out of the impugned F.I.R. are quashed. Rule is made absolute to the aforesaid extent. Direct service permitted.