

(2021) 04 GUJ CK 0011

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 5226 Of 2021

Haresh Ranchhodbhai Sonariya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 01-04-2021

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 465, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 320, 482

Citation : (2021) 04 GUJ CK 0011

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : Ashish M Dagl, RC Kodekar

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

1. Heard Mr.Dagli, learned advocate for the applicant and Mr.Kodekar, learned APP for the respondent-State through video conferencing.

2. At this stage, learned advocate Mr.M.K.Pujara appears and states that he has instruction to appear on behalf of the original complainant and he may be permitted to file his Vakalatnama as well as identity proof of the complainant. Permission is granted. Registry is directed to accept the Vakalatnama of Mr.Pujara and the identity proof that may be filed by learned advocate and put it on record.

3. Rule. Learned APP as well as learned advocate for respondent no.2 waive service. Considering the short dispute involved as also the settlement between the parties, the matter is taken up for final hearing today.

4. An F.I.R. came to be registered at C.R.No.-11203023200178 of 2020 before "A" Division Police Station, Junagadh, complaining about offences punishable under Sections 465, 467, 468, 471, 420 and 120-B of the Indian Penal Code.

5. Pending investigation/trial, the complainant i.e. respondent No.2 tenders affidavit acknowledging settlement between the complainant and the applicants. It has been affirmed by the respondent No.2 - complainant that the complainant has no grievance against the applicants. Complainant has also appeared before the Court through vide conferencing. He has affirmed the fact about settlement between the parties and stated that he has received Rs.8 Lacs from the applicants and he has filed an affidavit in this matter. He has also stated that he has no objection if the present application is allowed and the complaint is quashed and set aside. In the affidavit filed by the complainant, it is stated as under:-

"I say and submit that I am the original complainant aware about facts and circumstances of the case. I am filing this affidavit. I say and submit that after registration of the FIR after passage of time the dispute between myself and the petitioners came to be resolved with the help of friends and people of community and now no ill will or grievance exist amongst us. I say and submit that I have received Rs.8 lakhs and now account is settled. In view of this amicable settlement, if the Hon'ble court pleased to quash the proceedings I have no objection.

I am filing this affidavit on my free will and wish and without any due pressure from anybody and if the Hon'ble court pleased to quash the FIR as prayed for I have no objection."

6. The learned advocates for the applicants and respondent No.2 thus, would submit that looking to the nature of allegations against the applicants, even otherwise, no case against the applicants for the offence punishable under Sections 465, 467, 468, 471, 420 and 120-B of the Indian Penal Code is made out. It was, therefore, urged to quash the complaint and proceedings arising therefrom qua the present applicants.

7. The learned APP opposed the settlement contending that the offence in question are serious in nature, against the society and are not compoundable.

8. In the case of *Gian Singh V/s. State of Punjab* and another reported in (2012)10 SCC 303, the Hon'ble Apex Court, in para 61, laid-down the following proposition of law while distinguishing Section 482 from Section 320 of the Code of Criminal Procedure. The Hon'ble Apex provided the illustrative category of cases suitable for settlement and it was observed that heinous crimes like robbery, dacoity and rape etc. cannot be settled and suitability of the cases for settlement will depend upon the facts of each individual case. It was held that even the cases which are not compoundable under Section 320 of the Code of Criminal Procedure, can be settled under Section 482 of the Code, if the High Court finds the element of settlement. Para 61 reads as under:-

"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 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 predominatingly 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."

9. Considering the ratio as above, submissions of the learned APP cannot be countenanced. Mere invocation of the provisions for serious offences would not necessarily lead to inference of commission of such offences. It is noticed that in the complaint, half-hearted allegation against the applicants is made and further, when respondent No.2 - complainant has made intention of not supporting the prosecution case, clear by filing an affidavit, chances of prosecution succeeding against the applicants are very bleak. Only achievement in such a trial would be wastage of public time, money and energy. Under the circumstances, it is deemed appropriate to acknowledge the settlement placed on record by way of affidavit by respondent No.2-complainant.

10. Accordingly, the settlement is acknowledged and the complaint being C.R.No.-11203023200178 of 2020 registered with "A" Division Police Station, Junagadh and all connected proceedings arising therefrom, qua the present applicants, are quashed. Rule is made absolute with no order as to costs. Direct service is permitted.