

(2022) 06 GUJ CK 0011

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 8951 Of 2022

Iqbal Hasanali Syed

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 02-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 173, 438, 482
Indian Penal Code, 1860 — Section 120B, 143, 147, 149, 323, 342, 387, 389, 406, 409, 420, 465, 467, 468, 471, 477(A), 504, 506(2)

Citation : (2022) 06 GUJ CK 0011

Hon'ble Judges : Samir J. Dave, J

Bench : Single Bench

Advocate : B.B.Naik, Asim Pandya, Aniq A Kadri, Yash J Patel, Mitesh Amin, L.B.Dabhi

Final Decision : ?Dismissed

Judgement

Samir J. Dave, J

1. Rule. Mr.L.B.Dabhi, Learned Additional Public Prosecutor, waives service of notice of rule on behalf of respondent No. 1 – State and Mr. Yash Patel, learned advocate, waives service of notice of rule on behalf of respondent No. 2.
2. The present Criminal Misc. Application is filed under section 482 of the Code of Criminal Procedure, 1973 for quashing and setting aside FIR being Cr. No.11216010220200 of 2022 registered with Pethapur Police Station, Gandhinagar on 15.05.2022 for the offences under sections 387, 389, 120B, 143, 147, 149, 323, 504, 506(2) and 342 of Indian Penal Code, 1860.
3. As per the allegations made in present FIR, earlier one FIR bearing number 11201002210014 was registered with CID Crime Police Station, Ahmedabad Zone under Sections 406, 409, 420, 120(B), 465, 467, 468, 471, 477(A) of the IPC on 08.12.2021 against present complainant. A settlement arrived at between

the parties and the said FIR was quashed by an order of this Court. It is further alleged that thereafter, on 15.05.2022, a meeting was held between present accused persons, in which, present complainant was also remained present. All the accused persons forced the complainant to sign the certain papers / documents against his will. It is further alleged that at the relevant time, the petitioner, who is a practicing lawyer, was also present in the meeting and has also participated in the commission of the offences under sections 387, 389, 120B, 143, 147, 149, 323, 504, 506(2) and 342 of Indian Penal Code, 1860.

4. Heard learned Senior Advocate Mr. B. B. Naik with learned Senior Advocate and Mr. Asim Pandya assisted by learned Advocate Mr. Aniq Kadri for the petitioner, Mr. Mitesh Amin, learned Public Prosecutor for Respondent No.1-State and Mr.Yash Patel, learned Advocate for Respondent No.2-Original Complainant.

5. Mr. B.B.Naik, learned Senior Advocate appearing for the petitioner submits that the present petitioner is a designated Senior Advocate practicing before this Court and is very innocent and has been falsely arraigned as accused in the impugned FIR. The allegations made in the FIR do not constitute any offence or make out a case against the present petitioner. He further submits that allegation in the FIR does not disclose commission of a cognizable offence, justifying an investigation by the police officer under section 156(1) of the Code of Criminal Procedure. He further submits that the allegations made in the FIR 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 petitioner. He submits that present criminal proceeding is manifestly attended with a malafide and is maliciously instituted with an ulterior motive for wreaking vengeance on the petitioner and with a view to malign his reputation and with a personal grudge since the petitioner appeared for the other side. He therefore submits that present FIR filed against the present petitioner may be quashed.

6. On the other hand, Mr. Mitesh Amin, learned Public Prosecutor submits that bare reading of the FIR, it discloses commission of cognizable offence and hence, the Hon'ble Court may not interfere under section 482 of the Criminal Procedure Code to quash the FIR. He further submits that considering the nature and gravity of allegations, the seriousness of the alleged offence, the High Court may not use discretionary power under section 482 of the Code of Criminal Procedure in favour of the present petitioner. He submits that the police authority had tried to record the statement of the petitioner and hence, the police authority had visited all the relevant places where the petitioner accused may be found, but unfortunately the petitioner is not cooperating with the investigation. He further submits that since registration of the FIR, the petitioner is not available at his known places, his mobile phone is found switch of and considering his such conduct and behavior, as he is not available and he is not participating in investigation, there are all chances that he may temper with different evidences. All other accused are also not available at their known places hence investigation is also suffering.

7. I have heard learned Senior Advocate appearing for the petitioner and learned Public Prosecutor appearing for the respondent – State and learned advocate appearing for the original complainant. Having gone through the FIR, it cannot be said that the allegations made in present FIR do not disclose any cognizable offence. The allegations are very serious in nature and therefore, the same are required to be investigated by the Investigating Agency at this stage. It is to be noted that without even giving the sufficient time, even to the investigating agency, the petitioner has rushed to this Court and has prayed to quash the criminal proceedings under Section 482 of the Code of Criminal Procedure. The Investigating Officer must be given some reasonable time to investigate the allegations and to find out the veracity of the truth. Merely because the petitioner is an advocate is no ground not to permit the investigating agency into the allegations made against him and to quash the criminal proceedings at the threshold. As observed in the earlier round of the litigation, the petitioner represented the co-accused and therefore, as such it cannot be said that he is unknown to the transaction between the parties. If the allegations found to be true, it is a very serious matter as being an advocate and that too, a designated senior advocate is expected to be an upright and he is supposed to know the law. Therefore, at this stage, no interference of this Court in exercising the powers under Section 482 of the Code of Criminal Procedure is called for and the Investigating Agency cannot be restrained in performing the statutory duties under the relevant provisions of Code of Criminal Procedure.

8. At this stage, in a recent decision of the Hon'ble Supreme Court in case of Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors., reported in 2021 (19) SCC 401, is required to be referred to. After taking into consideration the earlier decision on exercising the powers under Section 482 of the Code of Criminal Procedure including the decision of State of Haryana V. Bhanaj Lal, reported in 1992 Supp (1) SCC 335 and others. The Hon'ble Supreme Court has observed in Para 37 and 80, which are as under:

"37. Then comes the celebrated decision of this Court in the case of Bhajan Lal (supra). In the said decision, this Court considered in detail the scope of the High Court powers under section 482 Cr.P.C. and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

"102.(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) 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.

(4) 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.

(5) 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.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) 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.”

In the above decision, the Apex Court came to the conclusion that,

“80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under section 482 of Cr.P.C and/or under of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under section 173 of Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under section 482 of Cr.P.C. and/or under section 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under section 482 of Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under section 482 of Cr.P.C., only has to

consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under section 173 Cr.P.C., while dismissing/disposing of the quashing petition under section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

9. In view of the above finding given by the Apex Court in case of Neeharika Infrastructure Pvt. Ltd. (Supra), it transpires that the power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too in rarest of the rare cases and it was not justified for the Court in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the inherent powers do not confer any arbitrary jurisdiction on the Court to act according to its whims and fancies.

"It is well settled that at the stage when the High Court considers a petition for

quashing criminal proceedings under section 482 of the Cr.P.C, the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no cognizable offence, as alleged has been made out, that the Court may be justified in exercising its jurisdiction to quash.”

10. At the time of hearing the application, a query raised that whether Criminal Misc. Application filed only under Section 482 of the Code of Criminal Procedure can be entertained before filing of the charge sheet.

11. In case of State of West Bengal and Ors. Vs. Sujit Kumar Rana, reported in (2004) 4 SCC 129, the Apex Court has determined thus:

“33. From a bare perusal of the aforementioned provision, it would be evident that the inherent power of the High Court is saved only in a case where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court amounts to abuse of the process of court. It is, therefore, evident that power under section 482 of the Code can be exercised by the High Court in relation to a matter pending before a court; which in the context of Code of Criminal Procedure would mean 'a criminal court' or whence a power is exercised by the court under the Code of Criminal procedure. Once it is held that the criminal court had no power to deal with the property seized under the Act, the question of the High Court's exercising its jurisdiction under section 482 of the Code of Criminal Procedure would not arise.

12. In case of State of Punjab Vs. Davinder Pal Singh Bhullar and Anr. reported in (2011) 14 SCC 770, the Apex Court has determined thus:

“51. The inherent power of the Court under Section 482 of the CrPC is saved only where an order has been passed by the criminal Court which is required to be set aside to secure the ends of justice or where the proceeding pending before a Court, amounts to abuse of the process of Court. Therefore, such powers cannot be exercised by the High Court in relation to a matter pending before a criminal court or where a power is exercised by the Court under Cr.P.C. Inherent powers cannot be exercised assuming that the statute conferred an unfettered and arbitrary jurisdiction, nor can the High court act at its whim or caprice. The statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. (Vide Kurushetra University V. State of Haryana and State of W.B. Vs. Sujit Kumar Rana)”

13. In view of the judgments delivered by the Hon'ble Supreme Court, I am of the humble opinion that before filing of the charge-sheet the learned Magistrate / Criminal Court has no material before it and therefore, present Criminal Misc. Application under section 482 of the Code of Criminal Procedure cannot be entertained, but before filing of the charge-sheet any citizen aggrieved by the registration of the FIR has to invoke the jurisdiction under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973.

14. Applying to the law laid down by the Hon'ble Supreme Court in case of Neeharika Infrastructure Pvt. Ltd. (Supra) to the facts of the case in hand, this Court is of the firm opinion that this is not a fit case to entertain present application and to quash the criminal proceedings in exercising the powers under Section 482 of the Code of Criminal Procedure at the threshold. The submissions made on behalf of the petitioner that he is an innocent and/or he has not committed any offence alleged is premature and too early to opine on the same without permitting the Investigating Agency to investigate the allegations made in the FIR. Even prayer made with regard to stay the criminal proceedings and/or no coercive steps be taken against the petitioner are also to be rejected.

15. In view of the above and for the reasons stated herein above, no case is made out to quash the FIR / criminal proceedings at this stage while exercising the powers under Section 482 of the Code of Criminal Procedure. If after investigation, it is found that the petitioner has committed any offence as alleged in that case he will be charge-sheeted and the petitioner may take recourse to the law. On the other hand, after investigation, if no case is found against the petitioner, the Investigating Officer may file the closer report, which may be considered by the competent Court in accordance with law. But, in any case, at this stage, the FIR is not to be quashed in exercising the powers under Section 482 of the Code of Criminal Procedure without permitting the Investigating Agency to investigate into the allegations made in the FIR. At this stage, it is required to be noted that the petitioner and other accused are not cooperating the Investigating Agency in the investigation. Further, the Apex Court has reiterated that High Courts cannot invoke jurisdiction under section 482 of Cr.P.C. to quash proceedings unless no offence is made out on plain reading of the allegations in the FIR as they stand.

16. For the reasons stated above, present application fails and the same deserves to be dismissed and is accordingly dismissed. Rule is discharged with no order as to costs.