

(2020) 06 GUJ CK 0010

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 7514 Of 2020

Ishvarbhai Samatbhai Chudasama

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

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

Gujarat Prohibition Act, 1949 — Section 65 (a), 65 (e), 116(b)120

Citation : (2020) 06 GUJ CK 0010

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Sandip M Patel, Manan Mehta

Final Decision : Dismissed

Judgement

Dr. Ashokkumar C. Joshi, J

1. The Applicant â?" Shailesh @ Lalo Rameshbhai Vaja Koli has filed this Application under Section 482 of the Code of Criminal Procedure, 1973 for

quashing of the FIR being I-CR No. 119/2017 registered with Una Police Station, Gir-Somnath for the offences punishable under Section 363 and 366

of the Indian Penal Code read with Section 18 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard learned Advocate Mr. Ruturaj Nanavati for the Applicant, learned APP Mr. Chintan Dave for the Respondent â?" State of Gujarat and

learned Advocate Mr. Kaivan K. Patel for Respondent No.2 â?" Original Complainant.

3. Rule returnable forthwith. Learned APP waives service of notice of Rule on behalf of the Respondent â?" State of Gujarat and learned Advocate

Mr. Kaivan K. Patel waives service of Rule on behalf of the Respondent No.2 â?" Original Complainant.

4. Learned Advocate for the Applicant has submitted that the Coordinate Bench (Coram: S.H.Vora,J) has passed the following order on 17.10.2019:

â??Learned advocate for the applicant seeks permission to withdraw present application with a liberty to file fresh application after the applicant and victim gets married. Permission is granted. The present application stands disposed of as withdrawn with above liberty.â??

5. Learned Advocate for the Applicant has placed heavy reliance upon the various judgments of the Honâ??ble Supreme Court for the year 2012 as

well as this Court that in catena of decisions, the Honâ??ble Supreme Court and this Court has permitted the settlement amongst the spouse and time

and again the Honâ??ble Supreme Court and this Court has quashed the FIR inter se / between the parties. In support of this argument, learned

Advocate for the Applicant has placed reliance on the following judgments:

(A) Gian Singh v. State of Punjab and Anr., 2012 (10) SCC 303 wherein it has been observed thus:

â??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 under Section 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 under Section 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.

61. 57. 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 victim's 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.

(B) Rajesbhai Natvarlal Agarwal v. State of Gujarat, 2005 (3) GLH 504 wherein the Hon'ble Court has observed that it would not be in the interest of justice to compel the parties to face trial despite there being settlement.

(C) Nikhil Merchant Vs. Central Bureau of Investigation & Anr., 2009(1) GLH 31 wherein it is held that continuance of criminal proceedings after the compromise arrived at between the parties would be a futile exercise.

(D) Merabhai Gelabhai Bharvad & vs State Of Gujarat, 2008(2) GLH 53, wherein it was held that in view of the compromise and as the dispute is of personal nature, prosecution is not likely to succeed and FIR was quashed.

(E) Khalidhusen Mehmudmiya Malek & vs State Of Gujarat, 2009 (1) GLH 190 wherein it was held that disputes between the parties are of a private nature, and compromise arrived between the parties, pragmatic view is required to be taken, FIR was quashed.

6. Learned Advocate Mr. Kaivan K. Patel appearing for the Respondent No.2 â?"Niranjanaben W/o Mahendrabhai Solanki (Original Complainant)

has produced on record the Affidavit dated 18.6.2020 sworn by the Respondent No.2. The Affidavit reads thus:

â?"I, Niranjanben W/O Mahendrabhai Solanki, Aged 45 years, Female, Hindu, Occupation: Fish vendor, Residing at; 9000, Vidyanagar Society,

Delvada Road, UNA, Gir-Somnath, the First informant in complaint being CR.No. I-119/2017 registered with Una Police Station, Gir-Somnath, for the

offences punishable under sections 376, 363 and 366 of the Indian Penal Code, 1860 read with under sections 18 of POCSO Act, 2012. I further say

and submit that I further state on oath and solemnly affirm that

1. I say and submit that the aforesaid complaint has been lodged against the present applicant by me. I further submit that now the undersigned has

accepted the relationship between my daughter and present applicant herein. Further, the applicants have legally wedded with my daughter and are

living a peaceful life at Mumbai.

2. I further say and submit that the Complaint do not wish to proceed further with the aforesaid FIR for my daughter's better future on account of

marriage solemnized between applicant and victim i.e. my daughter and therefore, has no objection if the impugned FIR is quashed and set-aside

against the present applicant.

3. I further say and submit that the settlement arrived in between me and the present applicant herein is without any force and / or any kind of threat

from the side of applicant. Solemnly affirmed at Ahmedabad on this 18th June, 2020.â??

7. In view of the order passed by the Coordinate Bench as aforesaid and thereafter further development in the matter as come forward by way of an

Affidavit by the Respondent No.2 - Original Complainant, learned Advocates appearing for the parties have submitted that now the cause does not

survive and therefore the FIR may be quashed and set aside.

8. The Honâ??ble Supreme Court in a judgment in case of Narender Singh & Others v. State of Punjab and Another reported in (2014) 6 SCC 466

has observed as under:

â??11. As to under what circumstances the criminal proceedings in a non-compoundable case be quashed when there is a settlement between the

parties, the Court provided the following guidelines:

â??Where the High Court quashes a criminal proceeding having regard to the facts that the dispute between the offender and the victim has been

settled although the 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 wrongdoing that seriously endangers and threatens

the wellbeing of the society and it is not safe to leave the crimedoer 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 the 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 the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the

offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavor 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 the victim and the offender and the 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 FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of

the 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.â??

12. Thereafter, the Court summed up the legal position in the following words:

â??The position that emerges from the above discussion can be summarized 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 plentitude with no statutory limitation but it has to be exercised in accord with the guidelines

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 victimâ??s 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 flavor 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 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.â??

9. The Coordinate Bench (Coram: Sonia Gokani,J) in a judgment in case of Kalubhai Virabhai Thakor (Mauluna) v. State of Gujarat, 2019 (0) AIJEL-

HC 240101 (Criminal Miscellaneous Application No. 1399 of 2019) has observed as under:

â??27. At this juncture, we would like also to add that the timing of settlement would also play a crucial role. If the settlement is arrived at immediately

after the alleged commission of offence when the matter is still under investigation, the High Court may be somewhat liberal in accepting the

settlement and quashing the proceedings/investigation. Of course, it would be after looking into the attendant circumstances as narrated in the previous

para. Likewise, when challan is submitted but the charge has not been framed, the High Court may exercise its discretionary jurisdiction. However, at

this stage, as mentioned above, since the report of the I.O. under Section 173, Cr.P.C. is also placed before the Court it would become the bounding

duty of the Court to go into the said report and the evidence collected, particularly the medical evidence relating to injury etc. Sustained by the victim.

This aspect, however, would be examined along with another important consideration, namely, in view of settlement between the parties, whether it

would be unfair or contrary to interest of justice to continue with the criminal proceedings and whether possibility of conviction is remote and bleak. If

the Court finds the answer to this question in affirmative, then also such a case would be a fit case for the High Court to give its stamp of approval to

the compromise arrived at between the parties, inasmuch as in such cases no useful purpose would be served in carrying out the criminal proceedings

which in all likelihood would end in acquittal, in any case.â??

10. This Court has also taken into consideration the Affidavit filed by the mother of the victim named Niranjnaben. It is also pertinent to note that since

the FIR was registered against the concerned so-called accused, the investigating agency might have investigated the matter and the parties had

approached the Coordinate Bench, the petition of the so-called accused is withdrawn, but simultaneously, the Coordinate Bench has given liberty to

approach this Court after the wedlock of the victim and the so-called accused. Therefore, the mother of the victim named Niranjnaben has filed an

Affidavit that her daughter has married with the so-called accused and both are living happily and therefore by holding the FIR and the further

investigation and further judicial process, same would be futile and it would be an abuse of process of law and ultimately it would not serve the

purpose of law. Simultaneously, it would not meet the ends of justice. Therefore, in special case, it would be in the best interest of justice to quash the

FIR. Further, as per the plain reading of Section 482 of Cr.P.C. also, the extraordinary powers can be exercised if there is an abuse of process of law

or to seek ends of justice. Here, in the present case, the mother of the victim has filed an Affidavit that both have been married and residing happily,

upon such premises, it would not be in fitness to continue the judicial process and therefore also the FIR is required to be quashed along with the

consequential relief or proceedings, if any, against the parties concerned and with reference to the FIR which is registered in this petition.

11. In view of the aforesaid discussion and the submission made by the learned Advocates appearing for the parties, the present petition deserves to

be allowed and accordingly stands allowed. The FIR being I-CR No. 119/2017 registered with Una Police Station, Gir-Somnath for the offences

punishable under Section 363 and 366 of the Indian Penal Code read with Section 18 of the Protection of Children from Sexual Offences Act, 2012 is

hereby quashed and set aside.

12. Rule is made absolute accordingly with no order as to costs.