

(2013) 04 GUJ CK 0028
In the Gujarat High Court

Case No : Criminal Misc. Application No. 13669 of 2007

Jabbarsingh Balvantsingh Devda and 19 Ors.

APPELLANT

Vs

Jamnaben Lachhabhai Bajag and Another

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) 04 GUJ CK 0028

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

Bench : Single Bench

Final Decision : Allowed

Judgement

R.M. Chhaya, J.—Heard Mr. Umesh Trivedi, learned Advocate for the applicant, Mr. M.P. Prajapati, learned Advocate for respondent No. 1 and Ms. Moxa Thakkar, learned APP for respondent State. By way of this application u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the Code), the applicants have prayed for quashing and setting aside FIR being CR No. I-63 of 2007 registered with Dhanera Police Station, District Banaskantha for the alleged offences u/Ss. 143, 504 and 506(2) of Indian Penal Code as well as u/s. 3(1) and 10 of the Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1988. Mr. Trivedi, learned Counsel submitted that the first informant was Sarpanch of village : Gola, Taluka : Dhanera, District: Banaskantha and as per the allegations made in the FIR, it is alleged that the applicants forced the first informant to resign as Sarpanch and also threatened the husband of the first informant. It is further alleged that the applicants were armed with deadly weapons like Pistol, Hockey and Sticks. Mr. Trivedi submitted that the allegations levelled in the FIR are false and same are made only at the instance of the persons who were interested against the applicants. Mr. Trivedi submitted that the parties staying in the same village have amicably resolved the dispute. Mr. Trivedi further submitted that any further continuation of the criminal proceedings pursuant to the impugned FIR would result into unnecessary harassment to the applicants as the parties have resolved the dispute. Mr. Trivedi further submitted that in view

of the settlement arrived at, the trial would be futile and any further continuation of the criminal proceedings would amount to abuse of process of Court and law and to secure the ends of justice this Court may exercise its inherent power u/s. 482 of the Code. Mr. Trivedi submitted that the first informant has also filed affidavit dated 9.4.2013 wherein it is stated on oath by first informant that in order to maintain peaceful atmosphere of the village the first informant does not wish to proceed further with the impugned FIR and its consequential proceedings. Mr. Trivedi therefore submitted that this Court may allow this application as prayed for.

2. Ms. Moxa Thakkar, learned APP has candidly submitted that as the parties have resolved the dispute, this Court may pass appropriate order.

3. Mr. M.P. Prajapati, learned Advocate for the first informant has tendered an affidavit wherein, in paragraph No. 3, it is stated that the applicants and the first informant are staying in the same village and because of the intervention of the elderly persons and with a view, not to disturb the peaceful atmosphere of the village, the first informant does not wish to proceed further with the FIR filed against the applicants.

4. Ms. Moxa Thakkar, learned APP was requested by the Court to inquire from the first informant Jamnaben Lachhabhai Bajag, who is present in the Court and the first informant has declared before the Court that she does not intend to proceed further and that because of the intervention of the elderly persons the dispute is resolved.

5. Considering the aforesaid, it reveals from the record that the parties have amicably resolved the dispute 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, considering the facts and circumstances arising out of the present application as well as considering the decisions rendered in the case of Gian Singh Vs. State of Punjab (supra), Madan Mohan Abbot Vs. State of Punjab, Madan Mohan Abbot Vs. State of Punjab, , 2009 (1) GLH 31 as well as in the case of Manoj Sharma Vs. State & Ors., 2009 (1) GLH 190, it appears that any further continuation of the criminal proceedings in relation to the impugned FIR against the applicants-original accused would amount to unnecessary harassment to the applicants and would also amount to abuse of process of law and court and hence, to secure the ends of justice, the impugned FIR as well as all other consequential proceedings arising out of the impugned FIR are required to be quashed in exercise of inherent jurisdiction of this Court u/s. 482 of the Code.

7. For the reasons stated hereinabove, the present application is allowed. The impugned F.I.R. being CR No. I-63 of 2007 registered with Dhanera Police Station, District Banaskantha as well as all other consequential proceedings arising out of the impugned FIR are hereby quashed. Rule is made absolute to the aforesaid extent.