

(2013) 10 GUJ CK 0065
In the Gujarat High Court

Case No : Special Criminal Application No. 1809 of 2013

Jashbirsing Devsing Chauhan and 1 Another	APPELLANT
Vs	
State of Gujarat and 1 Another	RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0065

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : P.P. Majmudar, s No. 1-2, for the Appellant; Pratik Y. Jasani, Advocate for the Respondent(s) No. 2, Ms. Reeta Chandarana, APP for the Respondent(s) No. 1 and Rule Served by D.S. for the Respondent(s) No. 2, for the Respondent

Judgement

K.M. Thaker, J.—In this petition u/s 482 of the Code of Criminal Procedure, the petitioners have prayed, inter alia, that:- 17 (A) YOUR LORDSHIPS may be pleased to quash the FIR being C.R. No. I-44 of 2013 registered at Odhav Police Station, Dist. Ahmedabad (at annexure-A hereto) as well as charge-sheet filed pursuant to the aforesaid FIR (at annexure-C hereto) and all consequential proceedings pursuant to the aforesaid FIR.

(B).....

(C).....

The FIR/complaint against which present petition is taken out is registered as C.R. No. I- 44 of 2013 dated 23.1.2013 wherein the complainant has alleged offence punishable under Sections 394, 323, 506(2), 294(b), 114 of Indian Penal Code, 25(1)(B) of Arms Act and Section 135(1) of the Gujarat Police Act. 2. Learned advocates for the petitioners, respondent and learned APP have jointly submitted that the allegations and reference about offence u/s 25(1)(B) of Arms Act is deleted at the request of I.O. vide application dated 2.4.2013. It is clarified that it is having regard to the said submission and clarification i.e. the allegation

about offence u/s 25(1)(B) of Arms Act is deleted that present order is passed.

3. Heard Mr. Majumdar, learned advocate for the petitioners, Mr. Jasani, learned advocate for the respondent and Ms. Reeta Chandarana, learned APP for the State.

4. So far as factual aspects are concerned, the petitioners have averred, in the petition that:--

By way of the present petition, the petitioners seek to invoke the inherent jurisdiction vested in this Hon"ble Court u/s 482 of the Code of Criminal Procedure as well as extraordinary jurisdiction vested under Article 226 of the Constitution of India and thereby seek quashing of absolutely illegal and unjustified FIR being C.R. No. I-44 of 2013 registered at Odhav Police Station, Dist. Ahmedabad for alleged offences punishable under Sections 394, 323, 506(2), 294(b), 114 of Indian Penal Code, 1860 and Section 135(1) of the Gujarat Police Act. It is submitted that even chargesheet is filed in the aforesaid FIR for the co-accused. It is submitted that the matter is amicably settled between the petitioners and respondent No. 2 and hence, the petitioners is approaching this Hon"ble Court seeking quashing of the impugned FIR. It is submitted that continuing with the criminal proceedings now would be nothing but abuse of the process of criminal law since the matter is already settled and the complainant has no grievance against the present petitioners and hence, in view of the said fact, the present petition may be entertained by this Hon"ble Court.

It is respectfully stated and submitted that the FIR was registered by respondent No. 2, inter alia, alleging that the petitioners on 23.1.2013 came near the house of respondent No. 2 and used filthy language against respondent No. 2 and his parents and allegedly petitioner No. 1 snatched a gold chain from respondent No. 2 and allegedly the petitioners threatened respondent No. 2. With the aforesaid and other allegations the FIR is registered.

5. The complainant has filed affidavit dated 12.6.2013. Learned counsel for complainant has stipulated that affidavit is made by his client and that the settlement and affidavit have been made by the respondent complainant voluntarily and without force or influence and the same are signed by his client. The learned advocate for the respondent has identified signature of his client.

5.1 In the affidavit, the complainant has stated and declared that:--

1. I say that an FIR being C.R. No. I-44 of 2013 registered at Odhav Police Station, Dist. Ahmedabad against the accused.

(2) I state that after filing of the aforesaid FIR an amicable settlement is arrived at between the parties of the aforesaid FIR.

(3) I state that now I have no grievance with regard to the aforesaid FIR qua the original accused persons therein and the misunderstanding with the original

accused is now removed and I do not wish to continue with the aforesaid FIR and I have no objection if the impugned FIR as well as all proceedings initiated pursuant thereto are quashed. I state that right now I am entering into the present compromise with a view to maintain peaceful and healthy relation with the original accused persons since the differences which I had with them are removed and none of our grievance survive.

(4) I state that the present compromise is arrived at without any coercion, force or undue influence.

6. Learned advocate for the petitioners submitted that the dispute between the complainant and the accused persons is purely and personal dispute and does not involve any public law element and also does not have any public law overtones. He also submitted that the dispute is settled and learned advocate for the petitioners also submitted that respondent No. 2 does not want to prosecute his complaint further and has no objection if the complaint is quashed. Learned advocate for the petitioners submitted that merely because the offence is not compoundable, it may not deter or restrain the Court from quashing the complaint if the Court is satisfied that the process of prosecution would be futile in view of the settlement between the parties and would cause hardships to the parties and would also burden on Court's time, besides the costs and expenses in terms of money.

7. Learned advocate for respondent No. 2 has adopted the submission by learned advocate for the petitioners and has also supported the request made by the petitioners. Learned advocate for respondent No. 2 also admitted that the parties to the dispute have arrived at voluntary settlement and respondent No. 2 now does not want to prosecute his complaint further and he has no objection if the complaint is quashed. Learned advocate for respondent No. 2 also submitted that the complainant admits the factum of settlement as well as the "fact that he has made and filed an affidavit declaring that the dispute is settled and that the settlement and the affidavit have been made voluntarily and without force and/or influence. Learned advocate for respondent No. 2 submitted that respondent has no objection if the complaint is quashed.

8. Learned APP has submitted that if the complainant does not want to prosecute the complaint further then the respondent State has no objection if the relief prayed for in application is granted.

9. In view of the said submissions by learned advocates for the petitioners and the respondents, it is appropriate to take into account the observations made in the decisions by the Hon'ble Apex Court in the case of Shiji @ Pappu and Others Vs. Radhika and Another, in the case of Nikhil Merchant Vs. Central Bureau of Investigation and Another, In the said case of Nikhil Merchant (supra), the Hon'ble Apex Court observed that:

8. This appeal has been filed against the said order of the High Court rejecting the appellant's prayer for discharge from the criminal complaint.

9. Appearing for the appellant, Mr. R. Nariman, learned senior advocate, submitted that the appellant was not the direct beneficiary of the loans which had been granted by the complainant-Bank, but had stood guarantee for the same in his capacity as the Managing Director of the Company to whom such loans had been advanced. Mr. Nariman submitted that while the loans were said to have been advanced to the Company-Accused No. 4 between 1986 and 1989, the suit for recovery of the unpaid dues was filed by the Andhra Bank in 1992 and two years there after the complaint was lodged by the Bank on 19th September, 1994 and the charge-sheet was filed by the CBI four years later on 30th December, 1998. Thereafter, the suit filed by the Bank for the recovery of its dues was compromised by a consent decree on 12th October, 2000, and in view of clause 11 of the consent terms, apart from the said suit, all other actions, including the criminal proceedings, also stood compounded. In support of his aforesaid submissions, Mr. Nariman also relied the decision rendered by this Court in the Duncans Agro case (supra) and B. S. Joshi's case (supra) and submitted that the High Court had erred in coming to a finding that the said two decisions had no application to the case in hand.

10. It is also relevant to take into consideration the observations by the Hon''ble Apex Court in the case of Madan Mohan Abbot Vs. State of Punjab, wherein, the Hon''ble Apex Court observed that:

4. We have heard the learned counsel for the parties. Concededly a compromise deed has been executed between the parties on 25th January 2002 in which it has been inter alia recorded as under:

Whereas for the past some time some dispute had arisen in between both the parties regarding which first party has got an FIR No. 155/2001 registered under Sections 379/406/409/418/34 of IPC in P.S. Kotwali Amritsar. After the registration of aforesaid criminal case a compromise has been arrived at in between both the parties. As a result of which both the parties have resolved their differences once for all. Now second party does not owe anything to the first party and first party has undertaken to co-operate with second party in every manner to get the aforesaid FIR cancelled/quashed from appropriate Forum. Furthermore first party has no objection if the bail of second party be accepted. Rather first party shall co-operate with second party in every manner to secure bail for him. In view of the compromise arrived at in between the parties entire differences and tensions those had arisen in between both the parties stands resolved and both the parties have undertaken not to file any proceedings either civil or criminal or any other such like proceedings against one another in any court of law at Amritsar or any other place within or outside India. This compromise is hereby executed in between both the parties in the presence of marginal witnesses on this 25th day of January 2002 at Amritsar.

5. It is on the basis of this compromise that the application was filed in the High Court for quashing of proceedings which has been dismissed by the impugned order. We notice from a reading of the FIR and the other documents on record

that the dispute was purely a personal one between two contesting parties and that it arose out of extensive business dealings between them and that there was absolutely no public policy involved in the nature of the allegations made against the accused. We are, therefore, of the opinion that no useful purpose would be served in continuing with the proceedings in the light of the compromise and also in the light of the fact that the complainant has, on 11th January 2004, passed away and the possibility of a conviction being recorded has thus to be ruled out. We need to emphasize that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law. We see from the impugned order that the learned Judge has confused a compounding of an offence with the quashing of proceedings. The outer limit of Rs. 250/- which has led to the dismissal of the application is an irrelevant factor in the later case. We accordingly allow the appeal and in the peculiar facts of the case, direct that FIR No. 155 dated 17th November 2001 P.S. Kotwali, Amritsar and all proceedings connected therewith shall be deemed to be quashed.

11. Thereafter, recently in the decision in the case of Gian Singh Vs. State of Punjab and Another, wherein the Hon"ble Apex Court observed that:

48. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable u/s 320 of the Code.

54. 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 compoudable 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.

55. B.S. Joshi 1, Nikhil Merchant, Manoj Sharma and Shiji alias Pappu do illustrate the principle that High Court may quash criminal proceedings or FIR or complaint in exercise of its inherent power u/s 482 of the Code and Section 320 does not limit or affect the powers of the High Court u/s 482. Can it be said that by quashing criminal proceedings in B.S. Joshi, Nikhil Merchant, Manoj Sharma and Shiji alias Pappu, this Court has compounded the noncompoundable offences indirectly? We do not think so. There does exist the distinction between compounding of an offence u/s 320 and quashing of a criminal case by the High Court in exercise of inherent power u/s 482. The two powers are distinct and different although ultimate consequence may be same viz., acquittal of the accused or dismissal of indictment.

56. We find no incongruity in the above principle of law and the decisions of this Court in Simrikhia, Dharampal, Arun Shankar Shukla, Ishwar Singh, Rumi Dhar (Smt.). and Ashok Sadarangani. The principle propounded in Simrikhia 14 that the inherent jurisdiction of the High Court cannot be invoked to override express bar provided in law is by now well settled. In Dharampal 15, the Court observed the same thing that the inherent powers u/s 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Similar statement of law is made in Arun Shankar Shukla 16. In Ishwar Singh, the accused was alleged to have committed an offence punishable u/s 307, IPC and with reference to Section 320 of the Code, it was held that the offence punishable u/s 307 IPC was not compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In Rumi Dhar (Smt.) although the accused had paid the entire due amount as per the settlement with the bank in the matter of recovery before the Debts Recovery Tribunal, the accused was being proceeded with for commission of offences u/s 120B/420/467/468/471 of the IPC along with the bank officers who were being prosecuted u/s 13(2) read with 13(1)(d) of Prevention of Corruption Act. The Court refused to quash the charge against the accused by holding that the Court would not quash a case involving a crime against the society when a prima facie case has been made out against the accused for framing the charge. Ashok Sadarangani 34 was again a case where the accused persons were charged of

having committed offences under Sections 120B, 465, 467, 468 and 471, IPC and the allegations were that the accused secured the credit facilities by submitting forged property documents as collaterals and utilized such facilities in a dishonest and fraudulent manner by opening letters of credit in respect of foreign supplies of goods, without actually bringing any goods but inducing the bank to negotiate the letters of credit in favour of foreign suppliers and also by misusing the cash-credit facility. The Court was alive to the reference made in one of the present matters and also the decisions in B.S. Joshi, Nikhil Merchant and Manoj Sharma and it was held that B.S. Joshi, and Nikhil Merchant dealt with different factual situation as the dispute involved had overtures of a civil dispute but the case under consideration in Ashok Sadarangani was more on the criminal intent than on a civil aspect. The decision in Ashok Sadarangani supports the view that the criminal matters involving overtures of a civil dispute stand on a different footing.

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 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.

12. Having regard to the aforesaid submission by learned advocate for the petitioners and respondent and also having regard to the fact that dispute between the parties is purely a personal and private dispute and any Public Law Element is not involved and considering the fact that the complainant has declared that he has voluntarily and without any force or influence settled the dispute with the petitioners and has declared in his affidavit that he does not want to prosecute the complaint and applying the principles laid down in the aforesaid decisions to the facts of the present case, it is apparent that in view of the compromise arrived at between the parties, permitting the prosecution to continue, would be an exercise in futility. Besides in view of the affidavit filed by the respondent No. 2 complainant, chances of an ultimate conviction are also bleak. In the circumstances, the interest of justice would be best served if the first information report is quashed. This is, therefore, a fit case for exercising powers u/s 482 of the Code to prevent abuse of the process of Court. The complaint deserves to be quashed. Having regard to aforesaid aspects, below mentioned order is passed:--

The relief prayed for in para 17(A) is granted and the complaint/FIR being CR No. I-44 of 2013 registered at Odhav Police Station, Dist. Ahmedabad and proceedings pursuant thereto are hereby quashed. Rule is made absolute to the aforesaid extent. No costs.

Direct service is permitted.