

(2017) 11 GUJ CK 0007
In the Gujarat High Court
Case No : 26679 of 2017

JAYESHBHAI BABUBHAI PATEL

APPELLANT

Vs

STATE OF GUJARAT & ANR.

RESPONDENT

Date of Decision : 10-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 147](#), [Section 307](#), [Section 323](#), [Section 148](#), [Section 149](#), [Section 143](#), [Section 504](#), [Section 506\(2\)](#) - Punishment for rioting - Attempt to murder - Punishment for voluntarily causing hurt - Rioting, armed with deadly weapon - Every member of unlawful assembly guilty of offence committed in prosecution of common object - Punishment - Intentional insult with intent to provoke breach of the peace - Punishment for criminal ,intimidation
[Scheduled Castes and Scheduled Tribes \(Prevention of Atrocities\) Act, 1989](#), [Section 3\(2\)\(v\)](#), [Section 3\(1\)\(r\)](#) -
Gujarat Police Act, 1951, Section 135

Citation : (2017) 11 GUJ CK 0007

Hon'ble Judges : J.B.Pardiwala

Bench : Single Bench

Advocate : DARSHAN A DAVE, ?DHARITRI PANCHOLI, MOXA THAKKAR

Judgement

1. Rule returnable forthwith. Ms. Thakkar, the learned Additional Public Prosecutor, waives service of notice of rule for and on behalf of the respondent No.1-State of Gujarat.. Ms. Pancholi, the learned advocate, has entered appearance on behalf of the respondent No.2-original complainant and waives service of notice of rule.

2. By this application under section 482 of the Code of Criminal Procedure, 1973, the applicants-original accused Nos.1 to 11, seek to invoke the inherent powers of this Court praying for quashing of the first information report

registered with the Gambhoi Police Station, Sabarkantha vide C.R. No.I- 106 of 2017 for the offence punishable under sections 307, 143, 147, 148, 149, 323, 504 and 506(2) of the Indian Penal Code, sections 3(1),(R)(S), 3(2)(V) of the Atrocities Act and section 135 of the G.P. Act.

3. The first informant and his father, i.e., the injured, namely, Amratbhai Chamar and the applicants herein are residing in one village. It appears that there was some dispute with regard to recovery of some money. On the fateful day of the incident, an altercation took place which led to a scuffle. At this stage, let me take note of the following averments made in the first information report filed by the first informant.

"This Jayeshbhai had started giving me kick and fist blows, and as my father Amrutbhai came to my rescue, Jayeshbhai picked up a log of wood from the ground and with the same hit a blow on the head of my father due to which heavy bleeding started. Therefore, I rushed to my house to call my brother and my uncle and from their my uncle Babuji Motibhai Chamar, Rajubhai Babubhai Chamar, Sanjaybhai Babubhai Chamar, Arvindhbai Mulabhai Chamar, Dashrathbhai Kachrabhai Chamar, Ishwarbhai Khemabhai Chamar, Vecharbhai Lavjibhai Chamar, my mother Jyotsnaben and my brother Rajunibhai and my sister-in-law Jagrutiben and Chetnaben, we altogether, went towards the shop of Marvadi."

4. Ms. Pancholi, the learned counsel, has appeared on behalf of the respondent No.2-original first informant and Mr. Darshan Dave, the learned counsel appears on behalf of the applicants. Both the learned counsel submitted that as the parties are residing in the same village and known to each other past couple of years, they have buried their differences with each other and have settled the matter. Both the learned counsel submitted, more particularly, Ms. Pancholi, the learned counsel appearing for the first informant that as the matter has been settled, the first information report be quashed. Ms. Pancholi submitted that asking the police to investigate into an incident, in which, settlement has taken place, will be nothing but an empty formality and waste of time. Ms. Pancholi submitted that both the sides are very keen to settle the matter and she ensures that peace would prevail between the parties for all times to come.

5. Ms. Thakkar, the learned APP, has an objection in accepting the settlement and quashing the first information report on the basis of the settlement. Ms. Thakkar pointed out that the first information report is for the offence under section 307 of the IPC. Section 307 of the IPC is an offence against the society and, in such circumstances, this Court may not accept the settlement and quash the first information report.

6. Ms. Thakkar made available for my perusal, the medical certificate of the injured dated 7th November, 2017, which reads as under;

"Alleged H/o injury by "Log of wooden" on Head on 18/10/17 about between 8 pm to 8:30 pm at Manorpur Gam Tal: Himmatnagar. Patient had taken pre

treatment in CHC Gambhoi & Ref here Ref. Note.

Vital date: (N)

L/E (1) stitch wound of 4 cm long over mid front parital area Reddish in colour Pt. coop. S/B Ap Surgery Dept. of our hospital. C.T. Brain fracture seen through right Zygomatic Arch & postero left wall of right orbit."

7. Ms. Thakkar also invited my attention to a recent decision of the Supreme Court in the case of Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur vs. State of Gujarat, Criminal Appeal No.1723 of 2017. In the decision of the Supreme Court, broad principles have been summarized so far as the inherent powers of the High Court under section 482 of the Cr.P.C. Is concerned and the power to quash the first information report on the basis of the settlement. The broad principles laid down by the Supreme Court are as under;

"15 The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court; (ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot

appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties

have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and

(ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance. "

8. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the first information report should be quashed on the basis of the settlement arrived at between the parties.

9. Ms. Thakkar, the learned APP appearing for the State, in her own way, justified in opposing the acceptance of the settlement. The learned APP is worried about section 307 of the IPC. It is true that this is something which the Court should not ignore. However, a little detailed examination of the materials on record would prima facie suggest or indicate that the incident occurred all of a sudden starting first altercation in words and then something went wrong and a log of wood which was lying on the ground was picked up, and with the same, a blow was hit on the head of the father of the first informant. Considering the genesis of the occurrence, I am of the view that section 307 of the IPC, as such, would not be applicable to the facts of the case. Of course, it is true that this issue, ordinarily, should be left for the Trial Court to decide, but the parties, present in the Court, are very desperate and keen to settle the matter. They are also right in their own way that they are all residents of the same village and

would like to maintain cordial relations with each other. The continuation of the proceedings may trigger further tension and the relationship would get further strained. In the peculiar facts and circumstances of the case and without citing this order as a precedent, I am inclined to accept the settlement. The first informant has filed an affidavit in this regard, inter alia, stating as under;

"I, Satishkumar Amrutbhai Chamar, Age: 17 years, Occ: Study, Residing at : Manorpur, Tal: Himmatnagar, Dist: Sabarkantha, do hereby solemnly affirm and state on oath as under:-

1. That I am the first informant and at my instance the FIR came to be registered with Mahisagar Police Station at Lunawada bearing C.R. No.I-106 of 2017 for the offences punishable under sections 307, 143, 147, 148, 149, 323, 504, 506(2) of the Indian Penal Code and section 135 of Gujarat Police Act and sections 3(1)(r)(s) and 3(2)(v) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1969 and therefore I am aware about the facts of the case and hence, I am competent to file this affidavit.

2. At the outset, I submit that I am filing this affidavit in support of the petition. I say and submit that after the registration of the aforesaid FIR, I have settled the dispute with the petitioners with the intervention of the leaders, elders and front runners of our village and therefore, I have decided not to proceed with the present FIR/Complaint.

3. I further say that the dispute of this offence is of private nature and therefore, public at large is not affected by the offence, therefore, I voluntarily give my

consent and without any force or coercion on me for the quashing of the said FIR/Complaint.

4. I say and submit that as I have already settled the dispute amicably with the help of other members of our locality, I do not wish to proceed with the criminal case and even thereafter, if the case is to proceed further the same would lead to shameful and embarrassing situation therefore, I would prefer not to step into witness box and to give evidence against the petitioners, neither I wish that the precious time of the Hon"ble Court be wasted in a matter which has already been compromised and therefore, the impugned FIR may kindly be quashed on the ground of settlement arrived at between me and the petitioners.

5. I say and submit that the FIR was filed by me therefore, I am filing this affidavit with my free will and consent and I would request that this application may kindly be allowed and the impugned FIR may be quashed and set aside on the ground of settlement.

6. That what is stated hereinabove is true and correct to the best of my knowledge and I believe the same to be true and I state the same on solemn oath.

Solemnly affirmed at Ahmedabad on this 30th Day of October, 2017."

10. In the result, this application is allowed. The first information report being C.R. No.I-106 of 2017 registered with the Gambhoi Police Station, Sabarkantha is hereby quashed. The parties are directed to maintain peace and they all undertake that no untoward incident would occur ever again in future. Rule is made absolute to the aforesaid extent.

Direct service is permitted.