

(2011) 05 GUJ CK 0136
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 2813 of 2011

Mahendrakumar Manilal Patel and Others	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 406, 408, 420, 468

Citation : (2011) 05 GUJ CK 0136

Hon'ble Judges : M.D. Shah, J

Bench : Single Bench

Advocate : K.J. Panchal, s 1-3, for the Appellant; L.R. Pujari, APP for Respondent No. 1 and S. Joshi, for the Respondent

Final Decision : Allowed

Judgement

M.D. Shah, J.—Rule. Mr. L.R. Pujari, learned Addl. Public Prosecutor and Mr. Sunil Joshi, learned advocate waive service of rule on behalf of Respondent Nos. 1 - State and 2 respectively.

2. The present application u/s 482 of the Code of Criminal Procedure has been filed for quashing of complaint registered as M Case No. 07 of 2005 with Sarkhej Police Station as well as private complaint being Criminal Inquiry Case No. 108 of 2005 dated 29.7.2005 pending before 1st Additional Civil Judge and Judicial Magistrate First Class, Ahmedabad Rural along with the orders passed thereon and further proceedings in pursuance to the said case for the offences punishable under Sections 406, 408, 420, 468, 471, 477A and 120B of Indian Penal Code.

3. Mr. Panchal submitted that Respondent No. 2 - original complainant - Nathiben Patel is real aunt of the applicants and the applicants are the real nephews of the Respondent No. 2 - original complainant and because of intervention of several family members and mediators, amicable settlement has taken place between Respondent No. 2 - original complainant and present applicants. It is further submitted that various Civil Suits and RTS proceedings were also pending before

the competent Court, wherein consent decree has been passed in pursuance of the consent terms arrived at before this Court in First Appeal No. 3265 of 2010. The consent terms arrived at between the parties is placed on record at Annexure-B.

4. The Respondent No. 2 - Nathiben is 90 years old lady. She is identified by learned advocate Shri Sunil Joshi. She submitted before this Court that she voluntarily entered into settlement and matter is amicably settled and she also requested to quash the complaint and criminal proceedings. Therefore, it is submitted that in view of settlement between the parties, complaint be quashed and petition be allowed. Mr. Panchal, has relied upon following decisions in support of his submissions:

(1) Nikhil Merchant v. CBI and Anr. 2009 (1) GLH 31

(2) Jagdish Chananan and Ors. v. State of Haryana and Anr. 2008 (2) GLH 53

(3) Manoj Sharma Vs. State and Others,

5. It is submitted by Mr. Joshi, learned Advocate appearing for Respondent No. 2 - original complainant that matter is settled and that the complainant has no grievance against the present applicants.

6. The Apex Court in the case of Madan Mohan Abbot Vs. State of Punjab, has observed as under in paras 5 and 7 of the judgment:

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.

7. 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.

7. Considering aforesaid decisions of the Hon"ble Supreme Court and settlement arrived between the parties, in opinion of this Court, no useful purpose would be served in continuing with the criminal proceedings and it will be harassment to the parties. Hence, a case is made out to exercise powers u/s 482 Code of Criminal Procedure.

8. In the result, present application is allowed. The complaint registered as M Case No. 07 of 2005 with Sarkhej Police Station as well as private complaint being Criminal Inquiry Case No. 108 of 2005 dated 29.7.2005 pending before 1st Additional Civil Judge and Judicial Magistrate First Class, Ahmedabad Rural along with the orders passed thereon and further proceedings in pursuance to the said case for the offences are required to be quashed and are accordingly quashed. Rule is made absolute to the aforesaid extent. Direct service is permitted.