

(2020) 07 GUJ CK 0085

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9902 Of 2020

Maheshdan Rajendrakumar Gadhvi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 482

Indian Penal Code, 1860 — Section 114, 294(b), 323, 324, 365, 506(2)

Gujarat Police Act, 1951 — Section 135

Citation : (2020) 07 GUJ CK 0085

Hon'ble Judges : Dr A. P. Thaker, J

Bench : Single Bench

Advocate : AB Gateshaniya, Maithili Mehta

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

1. By way of this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant begs to prays for quashing of the FIR being

C.R. No. 11993006200218 registered at Gandhidham-A Division Police Station, District Kachchh against the applicant and one other unknown

perpsoon for the offence under Sections 365, 323, 324, 294(b), 506(2), 114 of the Indian Penal Code and under Section 135 of Gujarat Police Act.

2. Heard Mr. A B Gateshaniya, learned advocate for the applicant, Ms. Mehta, learned APP for the respondent- State and Mr. Ashok Purhohit,

learned advocate for the original complainant through Video-conferencing.

3. Rule. Learned APP waives service of notice of Rule for the respondent State and Mr. Purohit, learned advocate waives service of notice of Rule

for the original complainant.

4. Considering the short dispute involved as also the settlement between the parties, the matter is taken up for final hearing today.

5. Pending investigation/trial, the complainant i.e. respondent No.2 Sagarbhai Sureshbhai Rajgor tenders affidavit acknowledging settlement between

the complainant and the applicant. It has been affirmed by the respondent No.2 "complainant that the complainant has no grievance against the

applicant. The original complainant is also on video- conferencing with his learned advocate. The learned advocates for the applicant and respondent

No.2 would submit that the complainant has accepted the fact narrated in the affidavit and submitted that he has no objection if the FIR is quashed

and present application is allowed.

6. The learned A.P.P. opposed the settlement contending that the offence in question are serious in nature, against the society and are not

compoundable.

7. In the case of Gian Singh V/s. State of Punjab and another reported in (2012)10 SCC 303, the Hon'ble Apex Court, in para 61, laid-down the

following proposition of law while distinguishing Section 482 from Section 320 of the Code of Criminal Procedure. The Hon'ble Apex provided the

illustrative category of cases suitable for settlement and it was observed that heinous crimes like robbery, dacoity and rape etc. cannot be settled and

suitability of the cases for settlement will depend upon the facts of each individual case. It was held that even the cases which are not compoundable

under Section 320 of the Code of Criminal Procedure, can be settled under Section 482 of the Code, if the High Court finds the element of settlement.

Para 61 reads as under:-

"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 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 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 predominatingly 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.â??

8. Considering the ratio as above, submissions of the learned A.P.P. cannot be countenanced. Mere invocation of the provisions for serious offences

would not necessarily lead to inference of commission of such offences. It is noticed that in the complaint, half-hearted allegation against the applicant

is made and further, when respondent No.2â?? complainant has made intention

of not supporting the prosecution case, clear by filing an affidavit, chances of prosecution succeeding against the applicant are very bleak. Only achievement in such a trial would be wastage of public time, money and energy. Under the circumstances, it is deemed appropriate to acknowledge the settlement placed on record by way of affidavit by respondent No.2
â?" complainant.

9. Accordingly, the settlement is acknowledged and the complaint and all connected proceedings arising therefrom, qua the present applicant, are quashed. Rule is made absolute with no order as to costs. Direct service is permitted.