

(2020) 07 GUJ CK 0095

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 10491 Of 2019

Manoj Vrajlal Trivedi

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 120B, 403, 467, 468, 471

Citation : (2020) 07 GUJ CK 0095

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Arjun R Sheth, Jaimil D Doshi, Pranav Trivedi

Final Decision : Allowed

Judgement

Gita Gopi, J

1. Rule. Mr. Pranav Trivedi, learned Additional Public Prosecutor, waives service of notice of rule on behalf of respondent No.1.

2. This petition has been filed under section 482 of the Code of Criminal Procedure for quashing and setting aside the first information report bearing

I-C.R. No.11191036200585 of 2020 registered with Navrangpura Police Station, Ahmedabad and the proceedings initiated in pursuance thereof.

3. Mr. Arjun Sheth, learned advocate for the applicants, submitted that there has been settlement with the complainant â?" Paral Hasmukh Shah.

Initially, the FIR was registered under sections 120B, 403 and 468 of the Indian Penal Code; however, at a subsequent stage, sections 467 and 471

IPC came to be added, and the issue was regarding the fact that the complainant and his wife had applied for a housing loan with Federal Bank

through the applicants for a total sum of Rs.84,00,000/- in around February,

2019, for buying plot of land and building house on the same, in a housing scheme. Thereafter, bank paid Rs.46,50,000/- to the person selling the plot of land Mr. Mukesh Patel and Rs.38,50,000/- to the accused no.1-

Anilkumar Dolatbhai Nikam, who had executed some work for the complainant in relation to the house pursuant to a work agreement. The

complainant came to know about work agreement in the April, 2019 and thus found that payment by the bank to Anilkumar Dolatbhai Nikam-accused

no.1 was illegal and the work agreement was a forged document and hence, the present FIR. Mr. Arjun Sheth, further submitted that sections 467 and

471 of the IPC came to be added in the FIR but there is no such allegations in the FIR of any elements of sections 467 and 471 of the IPC against the

present applicant. The parties have preferred to compromise and therefore, a settlement affidavit has been executed by and between the applicants

and the complainant. Therefore, there remains no dispute or grievance between the parties. Learned advocate, therefore, submitted that the Court

may even verify the said aspect from the complainant himself through video conferencing.

4. Considering the facts of the case, under instructions, a link was sent to learned advocate Mr. Rathin Raval, at whose Office the complainant was

reported to be present. The virtual Court verified the contents of the compromise with complainant -Paral Hasmukh Shah i.e. respondent no.2 and he

affirmed about the execution of said settlement affidavit before the Notary. He also admitted that he has no grievance against the applicants and has

consented to the quashment of the first information report filed by him. Since the parties have settled the dispute and the complainant has also

affirmed about its execution on verification, the settlement affidavit is taken on record.

5. Mr. Pranav Trivedi, learned Additional Public Prosecutor, submitted that in this matter, sections 467 and 471 of the Indian Penal Code has been

included, thus investigation reflects that serious allegations have been made with regard to forged documents, which are stated to be used as genuine.

Mr. Trivedi, further submitted that any first information report should be quashed in accordance with the guidelines of the Apex Court and the

parameters laid down therein.

6. This Court has heard the learned advocates on both the sides and has perused

the material on record. The complaint reflects that it was with regard to work agreement and the loan amount has been disbursed, the transaction is financial in nature, internal disputes have been resolved.

7. Considering the principle laid down by the Apex Court in the case of Gian Singh v. State of Punjab and another reported in 2012 (10) SCC 303, the present matter would fall under the criteria laid down therein. In paragraph-61 of the said judgment, it has been observed thus:

¶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 FIR may be exercised where the offender and the 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 a

serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the

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 a

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, the High Court may quash the criminal proceedings if in its view,

because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case

would put the 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 the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal

case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the

criminal proceeding.â??

8. Here, in the present case, the complaint was filed on 29.06.2020 and settlement affidavit came to be executed on 23.07.2020. This petition for

quashing was filed on 28.07.2020. Initially, in the first information report, the offences alleged were under sections 120B, 403 and 468 of IPC.

9. Admittedly, the dispute is a private and personal affair. The parties have arrived at the settlement. Thus, in view of the settlement arrived at

between the parties, there exists no scope for any further proceeding in the matter. The continuance of proceedings would lead to wastage of precious

judicial time as there would remain no possibility of any conviction in the case. Hence, the Court is of the opinion that this is a fit case where the

inherent powers of the Court under section 482 of the Cr.P.C. Could be exercised for securing the ends of justice.

10. In the result, the petition is allowed qua present applicants being accused nos.2 and 3. The first information report bearing I-C.R.

No.11191036200585 of 2020 registered with Navrangpura Police Station, Ahmedabad and the proceedings initiated in pursuance thereof are quashed

and set aside. Rule is made absolute.

11. As the FIR and proceedings qua present applicants- accused nos.2 and 3, has been quashed and set aside, present applicants being accused nos.2

and 3 are ordered to be released from the jail forthwith.