

(2020) 08 GUJ CK 0182

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 11098 Of 2020

Mashribhai Maldebbhai Nandaniya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Citation : (2020) 08 GUJ CK 0182

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Harshil C Dattani, JK Shah

Final Decision : Allowed

Judgement

Ashutosh J. Shastri, J

1. Present application under Section 482 of the Code of Criminal Procedure is filed for the purpose of seeking following reliefs:-

â??(A) YOUR LORDSHIPS may be pleased to quash and set aside the FIR being C.R. No.11185007200475 of 2020 registered at Salaya Marine

Police Station, District Devbhumi Dwarka (at annexure-a) as well as all the consequential proceedings thereto against the petitioner in the interest of

justice.

(B) During pendency and final disposal of the present petition, YOUR LORDSHIPS may be pleased to stay investigation in connection with the FIR

being C.R. No.11185007200475 of 2020 registered at Salaya Marine Police Station, District Devbhumi Dwarka (at annexure-a) against the petitioners

in the interest of justice.

(C) â?|â?|â?|â?|.â??

2. The case of the applicant is that the FIR was registered by respondent No.2 herein inter alia alleging that the accused persons had threatened the complainant and thereby abused on his caste when the complainant had gone at the place of the applicants for asking his remaining amount of Rs.2,40,000/-. The applicants have submitted that during passage of time, with the intervention of the family members and relatives, an amicable settlement took place in which the complainant himself has stated at length that on account of his uncontrolled aggression, he lodged the complaint without looking at the consequence and has clearly asserted in the affidavit that he has received all amount which is payable to him. Hence, with these material, present application is brought before this Court for seeking quashment of the complaint and all consequential steps pursuant to the impugned FIR.

3. Learned advocate Mr. Harshil C. Dattani appearing on behalf of the applicants has submitted that in respect of this complaint, an amicable settlement has taken place in true letter and spirit and no grievance of any nature is left out and overall settlement has already taken place for which the complainant has already received an amount of Rs.2,40,000/- undisputedly and therefore, there no purpose would be left in continuing with the prosecution, which would be a rigorous process.

4. As against the aforesaid submissions, learned advocate Mr. Bhavik Samani, who received instruction to appear on behalf of the respondent No.2 complainant, to file his appearance has confirmed the overall circumstance of the case in question and has clearly asserted and confirmed the fact that the complainant has already received the amount of Rs.2,40,000/- which was payable to him and in addition to that, Mr. Samani has kept the complainant present on the video screen and has identified him, in which the complainant has himself has asserted that compromise has taken place and he would not like to precipitate the complaint in any form. Mr. Samani has on the contrary requested not to grant the relief as prayed for in this application.

5. Learned APP Mr. J.K. Shah appearing on behalf of the respondent-State authority has submitted that this grievance between the complainant and the applicants is settled down amicably and in view of this, even the complainant who remained personally present on video screen has also confirmed

the fact of settlement, without opposing anything, learned APP Mr. Shah has left the matter to the discretion of this Court and has stated that in such

kind of situation, there may not be any objection if the relief is granted.

6. Having heard learned advocates appearing for the parties and having gone through the material on record, essentially, it appears that the complaint

which is filed with respect to some monetary consideration of Rs.2,40,000/-, which amount has already been paid by the accused persons to the

complainant and this fact is personally confirmed by the complainant who was present on the video screen and who was identified by his advocate

Mr. Bhavik Samani and further, in addition to that, on oath, the very complainant has produced affidavit dated 28.7.2020 reflecting on page 15 of the

application compilation. Hence, in such a peculiar background of fact, keeping in mind the proposition of law laid down by the several decisions of the

Apex Court as well as the decisions delivered by the Coordinate Bench of this Court, this Court is of the considered opinion that there is no point

precipitating the complaint in any form and the same would be nothing but the proceeding in futility and as such, keeping in view the observations

made by the Coordinate Bench, relying upon the Apex Court decision, the Court is inclined to consider the case of the applicants.

7. Since this Court is inclined to consider the request on the basis of the several decisions of the Coordinate Benches, few observations contained in

one of the decisions, i.e. order dated 27.8.2019 in Criminal Misc. Application No.16219 of 2019, are reproduced hereinafter:-

[9] It is now settled that in serious offence as one u/s 376 of the IPC cannot be subject matter of quashment of the proceedings initiated u/s 482 of the

Code of Criminal Procedure, 1973 on the ground of settlement between the accused and the victim. Suffice it to refer the various decisions rendered

by the Honâ??ble Apex Court on such aspect, more particularly, in cases of Anita Maria Dias Vs. State of Maharashtra reported in (2018) 3 SCC

290, Shimbu Vs. State of Haryana reported in (2014) 13 SCC 318 and Parbatbhai Ahir Vs. State of Gujarat reported in (2017) 9 SCC 641. However,

this Court cannot overlook the fact that the applicant and the victim girl got married and out of said wedlock, they have two children. Such situation is

an exception to the approach to deal with the proceedings initiated u/s 482 of the Code of Criminal Procedure, 1973 on the basis of settlement

between the victim and the accused and for the pre-dominant purpose of the welfare of the victim to ensure her better future life, it is just and proper

for this Court in exercise of extraordinary inherent powers u/s 482 of the Code of Criminal Procedure, 1973 could quash the impugned criminal

proceedings on the ground of settlement between the parties in cases where the accused has married and the complainant and the victim insist for

quashment of impugned criminal proceedings.

[10] In view of the aforementioned aspect, more particularly, in light of the statements made by respondent No.2 and the victim supported by duly

affirmed affidavit placed on record through their learned advocate Mr. Jarjis Khan, which is ordered to be taken on record, this Court is inclined to

consider the plea for quashment of the impugned FIR, as otherwise, it will detrimentally affect the family life of the victim girl and even the balance

and harmony that could be achieved by them in the resolution of disputes that again be irrecoverably lost.

[11] Since now, the dispute with reference to the impugned F.I.R. is settled and resolved by and between parties which is confirmed by the original

complainant through his learned advocate, the trial would be futile and any further continuation of proceedings would amount to abuse of process of

law. Therefore, the impugned F.I.R. is required to be quashed and set aside in view of peculiar facts of the case being exception to the general

principle of law to decline the quashment of proceedings of the nature like present one.

8. Hence, the application is allowed. Impugned FIR, C.R. No.11185007200475 of 2020 registered at Salaya Marine Police Station, District Devbhumi

Dwarka and all other proceedings taken out in pursuance thereof against the present applicants are hereby quashed and set aside. The applicants will

produce the certified copy of this order before the concerned learned Sessions Court and also before the investigating officer for necessary action.

Rule is made absolute to the aforesaid extent.

9. The Registry is directed to communicate this order by fax or e-mail to the concerned authority.