

(2024) 03 GUJ CK 0040
In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Quashing & Set Aside Fir/Order) No.
4781 Of 2024

Mega Grain Trading PVT. Ltd. & Ors

APPELLANT

Vs

State Of Gujarat & Anr

RESPONDENT

Date of Decision : 12-03-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482
Indian Penal Code, 1860 — Section 114, 406, 420

Citation : (2024) 03 GUJ CK 0040

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Nikunt K Raval, Dilbur Contractor, Kanva Antani

Final Decision : Allowed

Judgement

Hasmukh D. Suthar, J

1. Learned advocate Ms. Urmila Desai states that she has instructions to appear on behalf of the original complainant and thereby, seeks permission to file her Vakalatnama, which is granted. Heard learned advocates for the respective parties.

2. RULE. Learned advocates waive service of notice of rule on behalf of the respective respondents.

3. Considering the facts and circumstances of the case and since it is jointly stated at the Bar by learned advocates on both the sides that the dispute between the parties has been resolved amicably, this matter is taken up for final disposal forthwith.

4. By way of this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."), the applicant has prayed to quash and set aside the complaint being FIR C.R. No.11205032231429 of 2023 registered with Mundra Police Station, Kutch-Bhuj for the offences under Sections

406, 420 and 114 of Indian Penal Code, 1860 and all the consequential proceedings arising therefrom.

5. Learned advocates for the respective parties submitted that during the pendency of proceedings, the parties have settled the dispute amicably and pursuant to such mutual settlement, the original complainant has also filed an Affidavit, which is taken / placed on record. In the Affidavit, the original complainant has categorically stated that the dispute with the applicant/s has been resolved amicably and that he has no objection, if the present proceedings are quashed and set aside since there is no surviving grievance between them.

6. Having heard learned advocates on both the sides and considering the facts and circumstances of the case, It appears that Petitioner No.1 is a private company, while Petitioner No.2 is a consultant of the said company, and Petitioner No.3 is a Director in the company. The company primarily operates as a brokerage firm connecting importers and exporters. It has also provided brokerage services to the complainant's company. In June 2023, Petitioner No.2 was introduced to a supplier in Egypt named A1 Tabarak by another supplier, AL Farana, with whom they had previously dealt. In good faith, the petitioner connected A1 Tabarak and the complainant for import-export purposes. Both parties entered into a purchase agreement for the supply and purchase of caraway seeds. As mutually agreed between A1 Tabarak and the complainant, upon placing the purchase order, the complainant remitted 10% of the invoice amount to A1 Tabarak. The remaining 90% was to be paid once the container reached India. On August 21, 2023, the container from Egypt reached Mundra Port, and the complainant remitted the remaining 90% amount as agreed. However, upon inspecting the container, the complainant found that it consisted entirely of waste material, leading to the present FIR. However, the dispute has been amicably settled between the parties, and in this regard, the complainant has filed an affidavit stating that they have no objection if the complaint is quashed. In view thereof, no fruitful purpose would be served by proceeding further in the matter.

7. Insofar as offence under Section 420 of the IPC is concerned, it is appropriate to refer to the decision of the Hon'ble Apex Court in the case of Sarabjit Kaur vs. State of Punjab & Anr. reported in (2023)5 SCC 360 has held in paragraph No.13 as follows:

"13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2.

When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court."

8. In the case of *State of Haryana v. Bhajan Lal*, reported in 1992 Supp (1) SCC 335, the Apex Court has set out the categories of cases in which the inherent power under Section 482 CrPC can be exercised and held in para 102 as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Art. 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under sec. 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. In view of the principle laid down by the Apex Court in the cases of (i) *Gian Singh Vs. State of Punjab & Anr.*, reported in (2012) 10 SCC 303, (ii) *Madan Mohan Abbot Vs. State of Punjab*, reported in (2008) 4 SCC 582, (iii) *Nikhil Merchant Vs. Central Bureau of Investigation & Anr.*, reported in 2009 (1) GLH 31, (iv) *Manoj Sharma Vs. State & Ors.*, reported in 2009 (1) GLH 190 and (v) *Narinder Singh & Ors. Vs. State of Punjab & Anr.* reported in 2014 (2) Crime 67 (SC), in the opinion of this Court, the further continuation of criminal proceedings against the applicant/s in relation to the impugned FIR would cause unnecessary harassment to the applicant/s. Further, the continuance of trial pursuant to the mutual settlement arrived at between the parties would be a futile exercise. Hence, to secure the ends of justice, it would be appropriate to quash and set aside the impugned FIR and all consequential proceedings initiated in pursuance thereof under Section 482 of the Cr.P.C..

10. In the aforesaid backdrop, complaint is filed. It is necessary to consider whether the power conferred by the High Court under section 482 of the Code of Criminal Procedure is warranted. It is true that the powers under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage as the Hon'ble Supreme Court has decided in the case of *Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS & Anr.*, reported in AIR 2006 SC 2872.

11. In the result, the application is allowed. The impugned complaint being C.R. No.11205032231429 of 2023 registered with Mundra Police Station, Kutch-Bhuj as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside qua the applicant/s herein. Rule is made absolute. Direct service is permitted. If the applicant/s is/are in jail, the jail authority concerned

is directed to release the applicant/s forthwith, if not required in connection with any other case.