

(2020) 11 GUJ CK 0042
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 13711 Of 2020

Mitesh Meghnathi Bhikhangiri

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 27-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 482

Citation : (2020) 11 GUJ CK 0042

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

Bench : Single Bench

Advocate : Ruturaj Nanavati, Kaivan K Patel, Moxa Thakkar

Final Decision : Dismissed

Judgement

Dr. A. P. Thaker, J

1. The present application is filed by the applicants for the following reliefs:

â??A. Your Lordships be pleased to admit and allow this application.

B. Your Lordships is pleased to quash and set aside the FIR being CR No. I-11203004201111 of 2020 registered with C-Division Police

Station, Junagadh, against the applicants.

C. Pending admission, hearing and final disposal of this application, Your Lordships be pleased to stay proceedings of the FIR being CR

No. I-11203004201111 of 2020 registered with C-Division Police Station, Junagadh, and all other consequential proceedings against the applicants.

D. Chargesheet is not filed in the present FIR, DD. Be pleased to dispense with the CC of FIR looking to the present lockdown situation.

E. To pass such other and further orders necessary in the interest of justice.â??

2. Heard Mr. Ruturaj Nanavati, learned advocate for the applicants and Ms. Moxa Thakkar, learned APP for the respondent State and Mr. Kaivan

Patel, learned advocate for respondent No.2 " complainant.

3. Earlier, report was received from the Police Authority that compromise is arrived at due to threat given by the relatives of the applicants. In that

view of the matter, necessary material was placed by the applicants as well as the original complainant by way of further affidavit of Mr. Sajidbhai

Mohmmadbhai Hussain as well as Shehnazben Sajid Hussain Hala, who is wife of the complainant.

4. In the further affidavit of Mr. Sajidbhai Mohmmadbhai Hussain, it is averred in Paras-2, 3 and 4 as under:

2. I respectfully submit that the investigation officer called me for recording my statement on 3.10.2020. It is further submitted that the

entire dispute has been settled amicably without there being any force, fear or undue-influence from the applicants side. I respectfully

submit with all consciousness and sincerity, either in past or present no threat has been issued to me or any of my family members including

my mother, wife or any relatives. If further say and submit the entire dispute has been resolved peacefully and without any fear. I have also

received the remaining amount of Rs. 3,75,000/-towards value of my car from the applicants.

3. I respectfully say and submit that the undersigne have perused the statement dated 3.10.2020 and nowhere have mentioned that the

settlement so arrived between me and applicants was under any pressure or threat. On the contrary entire dispute arisen out of pure

monetary transaction between us and same leads to the registration of present FIR because of non-payment of part amount which now the

undersigned has received.

4. I further submit that the undersigned have no grudge against the applicants as also no fear to life or liberty and therefore submits that the

undersigned has no objection if the present FIR being CR No. I-11203004201111 of 2020 registered with C-Division Police Station,

Junagadh is hereby quashed against the applicants herein. I further say that because of intervene of the friends and family members of the

both sides the dispute is settled between the parties amicably.

6. I further say and submit that aforesaid affidavit preferred by me is without undue influence, threat or any kind of coercion from the

side of applicants herein. I also submit that on receipt of my outstanding amount from the applicants and further to avoid long legal

litigations and its expenses have entered into settlement. I further say and submit that the aforesaid affidavit is true, correct and best to my

knowledge.

5. In the affidavit of Shehnazben Sajid Hussain Hala, wife of the complainant has also contended in Paras 1, 2 and 3 as under:

1. I am the wife of the original complainant and same is filing this affidavit for limited purpose in pursuant to statement recorded by my

husband before the police authority on 3.10.2020 as well as in support of the affidavits filed by my husband before this Honourable Court.

2. I further say and submit that the settlement has been arrived at between my son and opposite party (applicants) is on the basis of amount

received to my son which was outstanding and payable by the applicants. I further submit that none of the accused- applicants has at any

point of time threatened or pressurised me or my husband to enter into settlement. I also submit that as my husband received the amount

from applicants, has advised him to settle the dispute to avoid expenses for long legal litigation.

3. I further say and submit that the compromise entered between my husband and the applicants is without any fear, threat or any kind of pressure. I

say and submit that presently also we are residing a peaceful and undisturbed life without having being any force or coercion from the side of the

applicants.

The Court has also inquired from the original complainant as well as the wife of the complainant regarding the settlement arrived at and they have

accepted that compromise has been arrived at between the parties without any fear and force and it is voluntary one and they have no objection if the

complaint is quashed and the 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. She has submitted that there are criminal antecedents against the applicants and as per the Police Report the settlement has been

arrived at due to pressure of the applicants and their relatives.

7. In the case of *Gian Singh V/s. State of Punjab* and another reported in (2012)10 SCC 303, the Honâ??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 Honâ??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:-

â??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 applicants is made and further, when respondent No.2 â?" complainant has made intention of not supporting the prosecution case, clear by filing an affidavit, chances of prosecution succeeding against the applicants 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 applicants, are quashed. Rule is made absolute with no order as to costs. Direct service is permitted.