

(2020) 08 GUJ CK 0222

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 11428 Of 2020

Mukeshbhai Hariprasad Thakor

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 18-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 320, 482
Indian Penal Code, 1860 — Section 114, 294(B), 323, 506(2)
Gujarat Police Act, 1951 — Section 135

Citation : (2020) 08 GUJ CK 0222

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Pravin Gondaliya, Harsh Vyas, H.K.Patel

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. This is an Application filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the FIR being CR No.1119601720071/2020 registered with Paniget Police Station, Vadodara for the offences punishable under Sections 323, 294(B), 506(2) and 114 of IPC read with Section 135 of the Gujarat Police Act.

2. Heard learned Advocate Mr. Pravin Godaliya for the Applicant, learned APP Mr. H.K. Patel for the Respondent - State of Gujarat and learned Advocate Mr. Harsh Vyas for Respondent No.2 - Original Complainant, through video conference.

3. Though the Vakalatnama of learned Advocate Mr. Harsh Vyas is not on record but he has made the statement at bar that he has already submitted his Vakalatnama. But on the basis o the affidavit and other papers and that the offence is registered upon the Applicant Accused, his verbal submission is accepted. Registry to place the Vakalatnama on record.

4. Rule. Learned APP waives service of notice of Rule on behalf of the

Respondent - State of Gujarat and learned Advocate Mr. Harsh Vyas waives service of of notice of Rule on behalf of Respondent No.2 - Original Complainant.

5. Learned Advocate for the Applicant has submitted to the Court that the amicable settlement is arrived at between the Complainant and the Applicant Accused and the Affidavit to that effect is also placed on record at Annexure-B. He further submitted that the Applicant Accused has no any antecedents and therefore the discretion may be exercised by this Hon'ble Court and the Application may be allowed.

6. Learned Advocate Mr. Harsh Vyas for the Original Complainant has produced on record the Affidavit dated 08.07.2020 sworn by the Respondent No.2. The Affidavit reads thus:

"I, the undersigned Kishorebhai Vinodbhai Vyas, Age-40 years, Male, Residing at A/201, Prayosha Flat, Labh Residency, Atladra, Vadodara, the Respondent No.2/ Original complainant in the application filed by applicant Mukeshbhai Hariprasad Thakor for the purpose of Quashing of the FIR filed by me vide CR NO. 1119601720071/2020 lodged before Paniget Police Station for the offences punishable u/s 323, 294(B),506(2) and 114 of the IPC and Section 135 of GP Act and all subsequent proceedings arises out of the same.

I say and submit that due to intervention of the respected members of the family and society, mutual understanding and agreement, the settlement is arrived between me and present applicant in the above said FIR ie CR No. 1119601720071/2020 and now I don't have any grievance with him i.e Applicant. The dispute was arisen due to some misunderstanding, arose due to some hot exchange of words and absolutely private in nature and the injure was absolutely simple in nature.

It is further submitted that the applicant herein is residing next door to my shop and the relation between us are now cordial. The entire dispute is now amicably resolved and an amicable settlement is arrived between us.

I further state that as such now I intend that I have no objection if the FIR filed by me is quashed and all subsequent proceedings arise out of the same.

I state that what is stated herein above is true and correct to the best of my knowledge, information and belief and I believe the same to be true and correct."

7. Learned Advocate for the Applicant and learned Advocate for the Original Complainant have submitted that the parties have entered into an amicable settlement by way of affidavit which is produced on record. They therefore submitted that the Application may be allowed and the FIR may be quashed.

8. This Court has considered the arguments advanced by the learned Advocates appearing for the respective parties.

9. Having heard the arguments advanced by the learned Advocates appearing for the respective parties, it transpires that the offence is registered upon the

Applicant Accused for the offences punishable under Sections 323, 294(B), 506(2) and 114 of IPC read with Section 135 of the Gujarat Police Act. The punishment for the offence under Section 323 is up to one year and under Section 294(B) is fine of Rs.1000/- and the punishment under Section 506(2) is up to 7 years but the offences are not so grave which invite the latest law of the land that whenever there is serious offence in that case the High Court may not exercise discretion under Section 482 of Cr.P.C. but in the present case, the offences are minor offences. Further, there is amicable settlement arrived at between the complainant and the accused person by way of an affidavit, therefore, it would be futile exercise if the trial shall take place and the purpose of the same would not be served and therefore in humble view of this Court, it would be just and proper to quash the FIR.

10. In view of the aforesaid facts and circumstances and the further development that took place in the matter as come forward by way of an Affidavit by the Respondent No.2 - Original Complainant, learned Advocates appearing for the parties have submitted that now the cause does not survive and therefore the FIR may be quashed and set aside.

11. The Hon'ble Supreme Court in a judgment in case of Narender Singh & Others v. State of Punjab and Another reported in (2014) 6 SCC 466 has observed as under:

"11. As to under what circumstances the criminal proceedings in a non-compoundable case be quashed when there is a settlement between the parties, the Court provided the following guidelines:

"Where the High Court quashes a criminal proceeding having regard to the facts that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the wellbeing of the society and it is not safe to leave the crimedoer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc. or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavor having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. Or the family dispute, where the wrong is basically to the

victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed."

12. Thereafter, the Court summed up the legal position in the following words:

"The position that emerges from the above discussion can be summarized 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 plentitude with no statutory limitation but it has to be exercised in accord with the guidelines 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 victim's 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 predominately civil flavor 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."

12. The Coordinate Bench (Coram: Sonia Gokani,J) in a judgment in case of Kalubhai Virabhai Thakor (Mauluna) v. State of Gujarat, 2019 (0) AIJEL-HC 240101 (Criminal Miscellaneous Application No. 1399 of 2019) has observed as under:

"27.At this juncture, we would like also to add that the timing of settlement would also play a crucial role. If the settlement is arrived at immediately after the alleged commission of offence when the matter is still under investigation, the High Court may be somewhat liberal in accepting the settlement and quashing the proceedings/investigation. Of course, it would be after looking into the attendant circumstances as narrated in the previous para. Likewise, when challan is submitted but the charge has not been framed, the High Court may exercise its discretionary jurisdiction. However, at this stage, as mentioned above, since the report of the I.O. under Section 173,Cr.P.C. is also placed before the Court it would become the bounding duty of the Court to go into the said report and the evidence collected, particularly the medical evidence relating to injury etc. Sustained by the victim. This aspect, however, would be examined along with another important consideration, namely, in view of settlement between the parties, whether it would be unfair or contrary to interest of justice to continue with the criminal proceedings and whether possibility of conviction is remote and bleak. If the Court finds the answer to this question in affirmative, then also such a case would be a fit case for the High Court to give its stamp of approval to the compromise arrived at between the parties, inasmuch as in such cases no useful purpose would be served in carrying out the criminal proceedings which in all likelihood would end in acquittal, in any case."

13. In view of the aforesaid discussion and the submission made by the learned Advocates appearing for the parties, the present petition deserves to be allowed and accordingly stands allowed. FIR being I-CR No.1119601720071/2020 registered with Paniget Police Station, Vadodara for the offences punishable under Sections 323, 294(B), 506(2) and 114 of IPC read with Section 135 of the Gujarat Police Act, is hereby quashed and set aside.

14. Rule is made absolute accordingly with no order as to costs.

15. Copy of this order be sent to the concerned Court and concerned Police Station through e-mail / fax.