

(2020) 08 GUJ CK 0065

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9881 Of 2020

Patel Mahmad Ajaz Sadikbhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 06-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 114, 294(b), 323, 324, 365
Gujarat Police Act, 1951 — Section 135(1)

Citation : (2020) 08 GUJ CK 0065

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

Bench : Single Bench

Advocate : Yash H Joshi, Dipen Dave, Maithili Mehta

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

1. Heard Mr. Yash Joshi, learned advocate for the applicant, Mr. Dipen Dave, learned advocate for the respondent No.2- original complainant, Ms.

Maithili Mehta, learned Additional Public Prosecutor for the respondent â?" State and learned advocate for the original complainant through Video

Conferencing.

2. At the request of learned advocates for the parties, the matter is taken up for final hearing.

3. By invoking the provisions of Section 482 of the Criminal Procedure Code, 1973, the applicant has sought relief to quash and set aside the impugned

FIR being C.R.No. A Part- 11191012200200 dated 26.2.2020 registered with Danilimda Police Station, for the offence punishable under Sections 365,

324, 323, 294(b), 114 of the Indian Penal Code and Section 135(1) of the G.P.

Act.

4. An affidavit-in-reply has been filed by the complainant to the following effect.

1. I have gone through the application filed by the applicants and I say that the alleged incident was occurred in said FIR. At the time I lodged

complain of incident decided to settle the issue amicably.

2. Subsequently, we both the parties have decided to settle the issue amicably. Resolved amicably due ot interference of the elders of the respective

parties and relatives. Now I have no grievance regarding the alleged incident against the present petitioners.

I say that I have no objection if the FIR at Annexure-A C.R. No. C.R.No-A Part - 11191012200200

registered with Danilimda Police Station, Ahmedabad for the offences punishable under Sections 365, 324, 323, 294(b), 114 of the IPC and 135(1) of

the G.P. Act quashed and prayer made by the petitioners in the present application is granted by this Hon'ble Court.

3. I say that due to interference and persuading by our Friends and neighbour and relatives of both parties, I have decided to compromise with all the

applicants and neither I have been threatened nor enticed by any person including the accused for compromise.â??

5. Now, it is submitted by learned advocates for both the parties as well as the original complainant, who has joined through Video Conferencing that

there is settlement arrived at between the parties. The original complainant has stated that he has no objection if the FIR is quashed.

6. Learned Additional Public Prosecutor for respondent - State has objected to quash the FIR.

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

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 applicant

is made and further, when respondent No.2 â?" original complainant has made intention of not supporting the prosecution case, clear by filing an

affidavit, chances of prosecution succeeding against the applicant 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. Therefore, in view of the affidavit filed by the complainant, the present application is allowed. The impugned First Information Report being

C.R.No. A Part- 11191012200200 dated 26.2.2020 registered with Danilimda Police Station, for the offence alleged therein and all other consequential

proceedings thereof are hereby quashed and set aside qua the present applicant. The application stands disposed of.