

(2015) 03 GUJ CK 0028
In the Gujarat High Court

Case No : Special Criminal Application (Quashing) No. 884 of 2015

Rajesh and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Gujarat Police Act, 1951 — Section 135(1)
Penal Code, 1860 (IPC) — Section 307, 323, 324, 325, 326

Citation : (2015) 03 GUJ CK 0028

Hon'ble Judges : V.M. Pancholi, J.

Bench : Single Bench

Advocate : Premal S. Rachh, for the Appellant; H.B. Punani, APP, Advocates for the Respondent

Judgement

V.M. Pancholi, J.—Rule returnable forthwith. Learned APP Ms. H.B. Punani waives service of notice of rule on behalf of respondent No. 1 - State of Gujarat and learned advocate Mr. Pratik Jasani waives service of notice of rule on behalf of respondent No. 2 - original complainant.

2. This petition is filed under Articles 226 of the Constitution of India read with the provisions of Code of Criminal Procedure, 1973, wherein the petitioner has prayed that the FIR being C.R. No. I-428 of 2013 registered with City "B" Division Police Station, Jamnagar be quashed and set aside.

3. Heard learned advocate Mr. Premal S. Rachh for the petitioners. Learned advocate for the petitioners submitted that the FIR being C.R. No. I-428 of 2013 came to be registered with City "B" Division Police Station, Jamnagar for the offences punishable under Sections 395, 397, 307, 325, 324, 323, 452, 427, 506(2), 504 and 34 of the Indian Penal Code read with Section 135(1) of the Gujarat Police Act. Learned advocate submitted that after the aforesaid FIR is filed, Investigating Officer carried out the investigation and charge-sheet came to

be filed before the concerned Magistrate Court and thereafter it has been committed to the learned Sessions Court. During the pendency of the said trial, matter is amicably settled with respondent No. 2 - original complainant and the injured. Learned advocate further submitted that compromise deed is executed by the parties on 03.07.2014. Copy of the same is produced on page 29 of the compilation. Learned advocate further referred to the affidavit filed by respondent No. 2 - original complainant, which is produced on page 21 of the compilation. Similarly, he has also referred to the affidavit filed by one Jitendra Jethalal Kankhara i.e. the injured witness and submitted that in the affidavits filed by the first informant and the injured witness they have specifically stated that the dispute is settled out of the Court and therefore if the impugned FIR and the charge-sheet filed pursuant thereto are quashed and set aside, they are not having any objection for the same.

4. Learned advocate for the petitioners relied upon the decision of the Hon''ble Supreme Court in the case of Yogendra Yadav Vs. The State of Jharkhand, . Learned advocate for the petitioner further relied upon the decision of the Hon''ble Supreme Court in the case of Narinder Singh and Others Vs. State of Punjab and Another, . Learned advocate for the petitioners further relied upon the orders passed by this Court in Criminal Misc. Application No. 20710 of 2014, Criminal Misc. Application No. 16176 of 2014 and Criminal Misc. Application No. 11060 of 2014, and submitted that in all the aforesaid cases, the concerned complainant filed the complaint for the offences punishable under Section 307 and other Sections of the Indian Penal Code and when the matter was settled between the original complainant and the injured witnesses, the Hon''ble Courts have quashed the FIR on the ground of settlement.

5. On the other hand, learned advocate Shri Pratik Jasani appearing for respondent No. 2 has also supported the arguments of learned advocate for the petitioners and submitted that if the impugned FIR is quashed and set aside, respondent No. 2 as well as the injured witness have no objection. He has further stated that the dispute is amicably settled out of the Court. Respondent No. 2 as well as the injured witness were remained present on 23.02.2015 before this Court and the learned advocate for respondent No. 2 has identified respondent No. 2 and the injured witness.

6. Learned APP Ms. Punani also submitted that the alleged offences are serious in nature. However, in view of the settlement arrived at between the parties, this Court may pass appropriate order in the interest of justice.

7. Having heard the learned counsel appearing on behalf of the parties and having gone through the documents produced on record and the decisions cited by the learned advocate for the petitioner, I am of the view that the respondent No. 2 - original complainant and the witness have voluntarily arrived at the settlement with the petitioners for which the affidavit is filed by the complainant. Respondent No. 2 - original complainant, in para 3 and 4 of her affidavit, stated thus:

"3. I say that the there was no enmity between myself and the present petitioners. In fact, petitioner is a very good friend of my husband. I say that I have settled the dispute with them and I do not wish to go on with the FIR filed by me against them. I say and submit that FIR in question was lodged by me out of misunderstanding, misconception, desperation, anger and anxiety and therefore also I do not want to prosecute petitioners any further for the FIR impugned in the present petition. I say that dispute between the parties is predominantly of civil nature and the offences alleged in the FIR are arising from commercial transactions which are basically private and personal in nature and the parties have resolved their entire dispute.

4. I say that after registration of the impugned FIR a meeting took place between both the sides and the misunderstanding between us got cleared. Both the sides belong to the same caste and upon intervention of elderly persons of the society and common friends, the matter has been resolved between us and an amicable settlement has been arrived at between the parties so as to maintain peaceful and healthy personal and business relationships in future. In view of amicable settlement, a compromise agreement is entered between the parties whereby we have received amount due towards full and final settlement as mentioned in the agreement. The complainant side has also withdrawn the civil suit and has also agreed to support the petitioners in respect of prosecution initiated against the petitioners on the basis of impugned FIR. After due deliberations and discussions amongst the parties, I have realized that FIR is the result of misunderstanding and misconception of facts. Hence, as per the mutual understanding and settlement, I have agreed to give consent for quashing of impugned FIR. Thus, I do not want to prosecute the impugned FIR against the petitioners. In the circumstances, it is crystal clear that dispute between the parties is purely of personal/private nature and no public policy is involved in the same. It is also clearly reflected that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and in respectful submission of petitioner quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice. I have also realized the nature of hardships and inconvenience, socially and mentally, it will cause to both the sides, if the criminal proceedings continue and both the sides are subjected to rigors of criminal trial, it will immensely affect our future prospects of better life."

8. The Hon"ble Supreme Court in the case of Yogendra Yadav (Supra) observed in para 4 to 7 as under:

"4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 of the Indian Penal Code which are non-compoundable. Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh v. State of Punjab). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482

of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and energy. That will also unsettle the compromise and obstruct restoration of peace.

5. In *Gian Singh* this Court has observed that where the High Court quashes a criminal proceeding having regard to the fact 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. Needless to say that the above observations are applicable to this Court also.

6. Learned counsel for the parties have requested this Court that the impugned order be set aside as the High Court has not noticed the correct position in law in regard to quashing of criminal proceedings when there is a compromise. Affidavit has been filed in this Court by complainant Anil Mandal, who is respondent No. 2 herein. In the affidavit he has stated that a compromise petition has been filed in the lower court. It is further stated that he and the appellants are neighbours, that there is harmonious relationship between the two sides and that they are living peacefully. He has further stated that he does not want to contest the present appeal and he has no grievance against the appellants. Learned counsel for the parties have confirmed that the disputes between the parties are settled; that parties are abiding by the compromise deed and living peacefully. They have urged that in the circumstances pending proceedings be quashed. State of Jharkhand has further filed an affidavit opposing the compromise. The affidavit does not persuade us to reject the prayer made by the appellant and the second respondent for quashing of the proceedings.

7. In view of the compromise and in view of the legal position which we have discussed hereinabove, we set aside the impugned order dated 4/7/2012 and quash the proceedings in S.C. No. 9/05 pending on the file of 2nd Additional Sessions Judge, Godda. The appeal is disposed of."

9. In view of the aforesaid, I am of the opinion that no fruitful purpose would be

served in continuation of the criminal proceedings in the present case and it will be an exercise in futility. Justice in the case demands that the dispute between the parties is put to an end and peace is restored. In the result, the petition is allowed. The FIR being C.R. No. I-428/2013 registered with City "B" Division Police Station, Jamnagar is ordered to be quashed. Consequently, all further proceedings pursuant to the said FIR shall stand terminated. Rule is made absolute.

10. The Registry to accept the Vakalatnama of learned advocate Mr. Pratik Jasani appearing for respondent No. 2 - original complainant.

Direct service is permitted.