

(2013) 04 GUJ CK 0099

In the Gujarat High Court

Case No : Special Criminal Application No. 444 of 2013 with Special Criminal Application No. 667 of 2013 with Special Criminal Application No. 783 of 2013 with Criminal Misc. Application No. 4907 of 2013

Rajeshkumar R. Nayak and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Citation : (2013) 04 GUJ CK 0099

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Judgement

R.M. Chhaya, J.—These four matters arise out of the same F.I.R. and the contentions raised therein are identical and, therefore, the same are heard and decided by this common judgment. Heard Mr. Saurabh G. Amin, learned advocate for the petitioners (in Special Criminal Application Nos. 444/13 and 667/13), Mr. Premal R. Joshi, learned advocate for the petitioner (in Special Criminal Application Nos. 783/13), Mr. Indravadan Parmar, learned advocate for the applicants (in Criminal Misc. Application No. 4907/13), Ms. Moxa Thakkar, learned Assistant Public Prosecutor for respondent No. 1-State and Mr. Dipen Desai, learned advocate for respondent No. 2-first informant (in all matters).

2. By way of these matters u/s 482 of the Code of Criminal Procedure, 1973 (the Code) the petitioners have prayed for quashing of F.I.R. being C.R. No. I-32 of 2012 registered at Nandasan Police Station for the offences under Sections 406, 420, 409, 452 and 120B of the Indian Penal Code, 1860 (the IPC).

3. It appears from the record that one Kinjal Metals Limited had taken hypothecation loan from IDBI Bank and had also executed a deed dated 30.04.2008 whereby the said company had agreed to assign its debt held in Kinjal Metals Ltd. in favour of Tirupati Finlease Limited, the company which is managed by the first informant. That because of some inter se dispute the IDBI refused to accept the said deed of assignment and while the said proceedings

were pending, the land in question belonging to the said company came to be sold to Rainbow Papers Limited. The record further reveals that even Dena Bank asserted that the same land was hypothecated in favour of Dena Bank in the year 1995, which in turn assigned the same in favour of Reliance Asset Construction Company Limited for a total sum of Rs. 1,58,96,310/-. On this factual background, respondent No. 2-first informant has lodged the impugned F.I.R.

4. Learned advocate for the petitioners have submitted before this Court that the parties have amicably settled the dispute. Mr. Dipen Desai, learned advocate for respondent No. 2 has filed affidavits of the first informant, Shri Bajrang Balkrishna Agrawal, dated 25.04.2013, in each matter, wherein at Paragraph Nos. 2 to 4, it has been averred thus:

2. I state that as a nominee of Purvesh Makreting Ltd. and India Nivesh, on 30.04.2008, Triupati Finlease Ltd., had entered into an agreement with IDBI Bank whereby IDBI Bank agreed to assign to it, the debt of Kinjal Metals Ltd. held by IDBI Bank. However, the Deed of Assignment was not executed by the IDBI Bank. In the meanwhile, on 30.03.2010, a property of Kinjal Metals Ltd. being survey No. 1434 paiki-1 was sold to the company of the petitioners (Rainbow Papers Ltd.). Feeling cheated, I as a director of Tirupati Finelease Ltd. lodged a complaint before Nandasan Police Station being CR No. I-32 of 2012 dated 24.03.2012 for offences punishable under S. 406, 420, 409, 452 and 120B of the Indian Penal Code alleging that the property was sold by Kinjal Metals Ltd. in collusion with IDBI Bank.

3. After lodging of complaint, I have come to know that other persons/authorities are also claiming their dues from the very property and further the possession of the property is with Rainbow Paper Ltd. Therefore, without going into the validity of the claims of the other parties, even at the end of the long drawn civil litigations, the title could still remain under cloud and hence, I thought it fit to settle the present disputes to put an end to all disputes. Therefore, a settlement was arrived at between Tirupati Finelease Ltd., Kinjal Metals Ltd. and Rainbow Papers Ltd. The terms of the settlement have been recorded in an Memorandum of Understanding dated 02.01.2013. The Board of Tirupati Finelease Ltd. has passed a resolution dated 31.12.2013 agreeing to the terms of settlement and had authorized me to execute the MoU.

4. In furtherance and in compliance of the settlement, Tirupati Finelease Ltd. has revoked and has treated as cancelled the agreement dated 30.04.2008 executed with IDBI Bank and has waived its right in favour of Purvesh Marketing Pvt. Ltd. and has declared that now Tirupati Finelease Ltd. has no right, title or interest of any nature in the debt or properties of Kinjal Metals Ltd. I have also filed pursis to withdraw the revenue proceedings initiated by me and have initiated steps to withdraw the Civil Suit filed before the High Court of Mumbai.

The said affidavits further reveal that on 02.01.2013 an Memorandum of

Understanding (MoU) has been executed between the parties and all disputes have been amicably settled.

5. In view of the aforesaid factual background which reveals from the matters, the learned advocate for the petitioners submitted that any further continuation of the proceedings pursuant to the impugned F.I.R. shall amount to harassment to the petitioners and in view of the settlement arrived at between the parties, trial would be futile and the same would also amount to abuse of process of law and court and, therefore, it is submitted that in order to secure the ends of justice, this Court may exercise its inherent jurisdiction u/s 482 of the Code and quash the impugned F.I.R. as well as all consequential proceedings arising out of the impugned F.I.R.

6. Ms. Moxa Thakkar, learned Assistant Public Prosecutor for respondent No. 1-State, states that in view of the fact that earlier the petitioners (of Special Criminal Application Nos. 444/13 and 667/13) approached this Court with a prayer of quashing of the impugned F.I.R. by filing Criminal Misc. Application Nos. 4731/2012 and 4733/12, which came to be dismissed by this Court (Coram: Rajesh H. Shukla, J.) vide common order dated 14.08.2012 and, therefore, this court may not entertain these matters. It is further submitted that the investigation is yet to be completed and, therefore also, this Court may not exercise the inherent powers u/s 482 of the Code. Learned Assistant Public Prosecutor has not been able to point out as to how the settlement, which has arrived at between the parties, would affect the public at large.

7. Learned advocate for the petitioners as well as respondent No. 2-original informant have submitted that--"the averments taken in the pleadings before this Court are not pressed. These matters are preferred mainly on the basis of the fact that the parties have amicably resolved the dispute and the same are based on those changed circumstances.

8. At the outset it may be noted that in view of the settlement arrived at between the parties concerned, these matters have been filed by the petitioners and only because earlier applications for quashing were dismissed by this Court on merits, in the opinion of this Court the same would not curtail the jurisdiction of Section 482 of the Code to entertain the matters on the basis of changed circumstances.

9. Mr. Saurabh G. Amin, learned advocate for the petitioners (in Special Criminal Application Nos. 444/13 and 667/13) has rightly relied upon the judgment of the Apex Court in the case of Devendra and Others Vs. State of U.P. and Another, wherein it has been observed thus (at Paragraph Nos. 25-26):

25. Mr. Das, furthermore, would contend that the order of the High Court dated 17-10-2005 would operate as *res judicata*. With respect, we cannot subscribe to the said view. The principles of *res judicata* as adumbrated in Section 11 of the CPC or the general principles thereof will have no application in a case of this nature.

26. The High Court has refused to quash a first information report as a different standard therefore was required to be applied. However, when materials are collected and a charge-sheet is filed on the basis whereof the Magistrate takes cognizance of the offence, the same would give rise to a new cause of action. An order taking cognizance of an offence on the basis a charge-sheet filed by the investigating officer and/or directing issuance of summons on a complaint petition, indisputably, would attract the provisions of Section 482 of the Code of Criminal Procedure if a case has been made out of invocation thereof.

10. In the instant case, as noted hereinabove, the earlier matters were moved on merits, whereas these matters are moved as MoU has been executed between the parties whereby the dispute, which was purely of civil nature, has been resolved.

11. This Court (Coram: K.M. Thakar, J.) while admitting Special Criminal Application No. 444 of 2013 passed the following order on 26.02.2013:

1. Heard Mr. Panchal, learned advocate for the petitioners and Mr. Jani, learned APP.

2. Mr. Dipan Desai, learned advocate has appeared and submitted that he has received instructions on behalf of respondent No. 2. He also submitted that he will enter his appearance on or before 27.2.2013.

3. Mr. Panchal, learned advocate for the petitioners submitted that the alleged offence is about dispute which is personal and private in nature. It is also submitted that dispute is settled between the petitioners and the private respondent. In support of the said submission, learned advocate for the petitioners has relied on the document at Annexure-C, page 25. It is also submitted that in pursuance of the said Memorandum of Understanding, civil proceedings have been withdrawn/disposed of.

4. Mr. Desai, learned advocate for respondent No. 2 has confirmed the aspect regarding settlement and withdrawal of other civil proceedings. It is also jointly submitted that in view of the settlement between the petitioners and respondent No. 2, the private respondent has no objection if the impugned FIR is quashed.

5. In view of the said joint submissions by the learned counsel for the petitioners and respondent No. 2, below mentioned order is passed.

6. RULE returnable on 5.3.2013. It will be open to the petitioners to request the Hon"ble Court where final hearing of the petition u/s 482 of the Code of Criminal Procedure, 1973 is assigned as per present roster, for early hearing and final decision of the petition on the next date. In the meanwhile, ad-interim relief in terms of para 11(C) is granted.

On the basis of which other three matters came to be admitted.

12. This Court vide order dated 25.04.2013 has observed thus:

1. Heard Mr. Saurabh Amin, learned Advocate for the petitioner in Special Criminal Application Nos. 667 of 2013 and 444 of 2013, Mr. Premal Joshi, learned Advocate for the petitioner in Special Criminal Application No. 783 of 2013, Mr. Indravadan Parmar, learned Advocate in Criminal Misc. Application No. 4907 of 2013, Ms. Moxa Thakkar, learned APP for State and Mr. Dipen Desai, learned Advocate for the first informant (respondent No. 2). Mr. Desai tenders Affidavits which are taken on record.

2. Mr. Desai, learned Counsel appearing for first informant (in all matters)- Respondent No. 2 states that, the first informant is present in the Court. Mr. Bajranglal Balkishan Agrawal is identified by Mr. Desai, learned Counsel for Respondent No. 2. Mr. Agrawal states before this Court that the Affidavits have been filed by him today and that the complaint which was filed has been amicably settled. List for orders on 26.4.2013.

13. Having heard the learned advocates appearing on behalf of the respective parties, considering the facts and circumstances arising out of the present application as well as considering the decisions rendered in the cases of Jayrajsinh Digvijaysinh Rana Vs. State of Gujarat and Another, , Gian Singh Vs. State of Punjab and Another, , Madan Mohan Abbot Vs. State of Punjab, , Nikhil Merchant V/s. Central Bureau of Investigation & Anr., 2009 (1) GLH 31 as well as in the case of Manoj Sharma Vs. State & Ors., 2009 (1) GLH 190, it appears that further continuation of criminal proceedings in relation to the impugned F.I.R. against the petitioners-original accused would be unnecessary harassment to the petitioners and the trial would be futile and would also amount to abuse of process of law and court and hence, to secure the ends of justice, the impugned F.I.R. is required to be quashed in exercise of power u/s 482 of the Code.

14. For the reasons stated hereinabove, the present matters are allowed. Impugned F.I.R. being C.R. No. I-32 of 2012 registered at Nandasan Police Station as well as all other consequential proceedings arising out of the aforesaid F.I.R. are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. Registry to place a copy of this order in the connected matters.