

(2020) 07 GUJ CK 0087

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9309 Of 2020

Samsudin @ Khokhan Akbar Shikh

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 320, 482
Indian Penal Code, 1860 — Section 406, 420

Citation : (2020) 07 GUJ CK 0087

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

Bench : Single Bench

Advocate : Kamlesh S Kotai, Maithili Mehta

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

1. By way of this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant begs to pray for quashing of the FIR being CR

I-No. 48 of 2019 registered at Lal- Gate Police Station, District Surat against the applicant for the offence under Sections 406 and 420 of the Indian

Penal Code.

2. Heard Mr. Kamlesh Kotai, learned advocate for the applicant, Ms. Mehta, learned APP for the respondent- State and Mr. Jitendra Kotai, learned

advocate for the original complainant through Video-conferencing.

3. Rule. Learned APP waives service of notice of Rule for the respondent State and Mr. Purohit, learned advocate waives service of notice of Rule

for the original complainant.

4. On 22.7.2020, this Court passed following Order:

â?? Heard Mr.Kamlesh Kotai, learned advocate for the applicant, Ms.Maithili Mehta, learned APP for respondent no.1 and Mr.Jitendra Kotai, learned advocate for the complainant through video conferencing. In view of earlier order, learned APP has sent statements of victims, which have been recorded by the police officer regarding the settlement between the parties. Even the victims are also present through video conferencing and they have filed their respective affidavits, which are on record. Through video conferencing, this Court has inquired about the settlement between the parties to some of the victims viz. Hiteshbhai Parsottambhai Ambaliya, Goyani Jayesh Himmatbhai, Kakadiya Keyurbhai Rameshbhai, Pala Manishbhai Dhirubhai, Kheni Vijaybhai Himmatbhai. All of them have admitted about the fact of settlement between the parties and they have also stated that they have no objection if the complaint is quashed. However, one of the victim, viz. Bhogar Rinkeshbhai Bhagawatbhai has stated that though the settlement is arrived at, no amount is yet received by him.

In view of above, the matter is adjourned to 31.7.2020.â??

5. Considering the short dispute involved as also the settlement between the parties, the matter is taken up for final hearing today.

6. Pending investigation/trial, the complainant i.e. respondent No.2 Nakarani Prakashbhai Mansukhbhai tenders affidavit acknowledging settlement

between the complainant and the applicant. It has been affirmed by the respondent No.2 â?" complainant that the complainant has no grievance

against the applicant. The victim Mr.Rinkeshbhai Bhagawatbhai Bhogar was on videoconferencing with his learned advocate and he has accepted

that his grievance has been redressed and he has no objection if the application is allowed. At the same time, victim Mr. Natha Jivanbhai Sabhaya and

Mr. Sanjaybhai Amrutlal Patel have also appeared through Video-conferencing and they have accepted that they have filed their respective affidavits

regarding amicable settlement arrived at between the parties and their grievance have been redressed and they have no objection if the application is

allowed and the FIR is quashed. The learned advocates for the applicant and respondent No.2 would submit that the complainant has accepted the

fact narrated in the affidavit and submitted that he has no objection if the FIR is quashed and present application is allowed.

7. 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.

8. In the case of *Gian Singh V/s. State of Punjab* and another reported in (2012)10 SCC 30,3 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??

9. 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.2â?" 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.

10. Accordingly, the settlement is acknowledged and the complaint and all connected proceedings arising therefrom, qua the present applicant, are

quashed. Rule is made absolute with no order as to costs. Direct service is permitted.