

(2020) 08 GUJ CK 0290

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 11512 Of 2020

Shantaben Magabhai Parmar

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 20-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 320, 482
Indian Penal Code, 1860 — Section 114, 323, 354(A), 504, 506(2)
Gujarat Police Act, 1951 — Section 135

Citation : (2020) 08 GUJ CK 0290

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

Bench : Single Bench

Advocate : Mahesh K Poojara, Kishan Prajapati, HK 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 No. 11209020200911 of 2020 registered with Idar Police Station, District Sabarkantha for the offences punishable under Sections 323, 354(A), 504, 506(2) and 114 of the Indian Penal Code read with Section 135 of the Gujarat Police Act.

2. Heard learned Advocate Mr. Mahesh K. Poojara for the Applicants, learned APP Mr. H.K. Patel for the Respondent - State of Gujarat and learned Advocate Mr. Kishan Prajapati for Respondent No.2 - Original Complainant, through video conference.

3. Though the Vakalatnama of learned Advocate Mr. Kishan Prajapati is not on record but he has made the statement at bar that he has already submitted his Vakalatnama. But on the basis of the affidavit and other papers and that the offence is registered upon the Applicants 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. Kishan Prajapati waives service of of notice of Rule on behalf of Respondent No.2 - Original Complainant.

5. Learned Advocate for the Applicants has submitted to the Court that the amicable settlement is arrived at between the Complainant and the Applicants Accused persons and three different Affidavits to that effect, filed by the Complainant and the Injured Witness and the Witness are placed on record at Annexure-B. He therefore prayed that the discretion may be exercised by this Hon'ble Court and the Application may be allowed.

6. Learned Advocate Mr. Kishan Prajapati for the Original Complainant has produced on record the Affidavit dated August 2020 sworn by the Respondent No.2. The Affidavit reads thus:

"I, Brijrajkunwar W/o Kalyansinh Karansinh Kumpawat, Aged: 63 years, Female, Occupation: House Hold Work, Residing At: village: Kukadiya, Taluka: Idar, Dist: Sabarkantha, respondent no.2 - Ori. Complainant herein files this affidavit as under:

I say and submit that I am the Ori. Complainant who has filed the FIR registered as FIR No. 11209020200911 of 2020 before Idar Police Station, Sabarkantha for the offences punishable under section 323, 354(A), 504, 506(2) and 114 of I.P.C. and section 135 of the Gujarat Police Act. I say and submit that after registration of the above referred complaint, at present the dispute between petitioners and myself came to be resolved with the help of family members and village people. I say and submit that I have no grudge or grievance against the petitioners and now no ill-will or grievance exist amongst us.

I further say and submit that we all are residing peacefully at present and relations are also good. I further say and submit that the FIR came to be lodge because of minor misunderstanding and same has been sorted out with the help of family members and village people and there is cross FIR between the parties and now in both FIR there is amicable settlement and therefore I further say and submit that I have no objection if the Hon'ble Court pleased to quash and set aside the FIR lodge me against the petitioners herein above."

7. The Affidavit filed by injured witness - Viratsinh Kalyansinh Kumpawat reads as under:

"I, Viratsinh Kalyansinh Kumpawat, Aged: 39 years, male, Occupation: labour Work, Residing At: village: Kukadiya, Taluka: Idar, Dist: Sabarkantha, injured witness herein files this affidavit as under:

I say and submit that I am injured witness in complaint filed by the Ori. Complainant as FIR No. 11209020200911 of 2020 before Idar Police Station, Sabarkantha for the offences punishable under section 323, 354(A), 504, 506(2) and 114 of I.P.C. and section 135 of the Gujarat Police Act. I say and submit that after registration of the above referred complaint, at present the dispute between

us is resolved with the help of family members and village people and I do not received any serious injury in nature. I say and submit that I have no grudge or grievance against the petitioners and now no ill-will or grievance exist amongst us.

I further say and submit that we all are residing peacefully at present and relations are also good. I further say and submit that the FIR came to be lodge because of minor misunderstanding and same has been sorted out with the help of family members and village people and there is cross FIR between the parties and now in both FIR there is amicable settlement and therefore I further say and submit that I have no objection if the Hon'ble Court pleased to quash and set aside the FIR lodge by ori. Complainant against the petitioners herein above."

8. Further, the Affidavit filed by Witness - Nandini Kalyansinh Kumpawat reads as under:

"I, Nandini Kalyansinh Kumpawat, Aged: 40 years, Female, Residing At: village: Kukadiya, Taluka: Idar, Dist: Sabarkantha, witness herein files this affidavit as under:

I say and submit that I am the witness in FIR filed by Ori. Complainant as FIR No. 11209020200911 of 2020 before Idar Police Station, Sabarkantha for the offences punishable under section 323, 354(A), 504, 506(2) and 114 of I.P.C. and section 135 of the Gujarat Police Act. I say and submit that after registration of the above referred complaint, at present the dispute between us is resolved with the help of family members and village people. I say and submit that I have no grudge or grievance against the petitioners and now no ill-will or grievance exist amongst us.

I further say and submit that we all are residing peacefully at present and relations are also good. I further say and submit that the FIR came to be lodge because of minor misunderstanding and same has been sorted out with the help of family members and village people and there is cross FIR between the parties and now in both FIR there is amicable settlement and therefore I further say and submit that I have no objection if the Hon'ble Court pleased to quash and set aside the FIR lodge by me against the petitioners herein above."

9. Learned Advocate for the Applicants and learned Advocate for the Original Complainant have submitted that the parties have entered into an amicable settlement by way of three different Affidavits which are produced on record. They therefore submitted that the Application may be allowed and the FIR may be quashed.

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

11. 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, 354(A), 504,

506(2) and 114 of I.P.C. and section 135 of the Gujarat Police Act. The punishment for the offence under Section 323 is up to one year 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 persons by way of Affidavits, 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.

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

13. 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 predominatingly 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 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."

14. 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."

15. 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 No. 11209020200911 of 2020 registered with Idar Police Station, District Sabarkantha for the offences punishable under Sections 323, 354(A), 504, 506(2) and 114 of the Indian Penal Code read with Section 135 of the Gujarat Police Act is hereby quashed and set aside.

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

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