

(2010) 12 GUJ CK 0005

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 11351 of 2010

Suthar Rameshbhai Pujaram

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Atrocities Act — Section 3(1), 3(10)
Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 114, 323, 394, 504, 506(2)

Citation : (2010) 12 GUJ CK 0005

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : D.K. Chaudhari, for the Appellant; M.R. Mengdey, A.G.P. for Respondent 1 and Pratik B. Barot, for Respondent 2, for the Respondent

Judgement

M.R. Shah, J.—Mr. M.R. Mengdey, learned Additional Public Prosecutor waives service of notice of rule on behalf of the Respondent No. 1 and Mr. Pratik Barot, learned advocate waives the service of notice on behalf of the Respondent No. 2.

2. In the facts and circumstances of the case and with the consent of the learned advocates appearing on behalf of the respective parties, present petition is taken up for final hearing.

3. Present petition has been preferred by the Petitioner - original accused No. 2, u/s 482 of the Code of Criminal Procedure, to quash and set aside the impugned complaint/FIR being CR No. I-151 of 2010 registered with Chanasma Police Station for the offences punishable under Sections 394, 323, 504, 506(2) and 114 of Indian Penal Code and for the offence punishable u/s 135 of Bombay Police Act and for the offences punishable under Sections 3(1)(x) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities Act, 1989 (Act No. 33 of 1989) (hereinafter referred to as "Atrocities Act" for convenience).

4. Mr. Chaudhary, learned advocate appearing on behalf of the Petitioner -

original accused No. 2 has stated at the bar that the Petitioner is pressing and/or praying to quash and set aside the aforesaid First Information Report in question so far as the offence u/s 3(1)(x) of the Atrocities Act only and he does not press the present petition to quash and set aside the impugned FIR for the rest of the offences.

5. Mr. Chaudhary, learned advocate appearing on behalf of the Petitioner has taken the Court to the necessary averments made in the impugned FIR against the Petitioner original accused No. 2 for the offences punishable u/s 3(1)(x) of the Atrocities Act and has also taken the Court to other correspondences taken place earlier by other persons, submitting that the original complainant had threatened in past also that he will file false complaint for the offence under the Atrocities Act.

6. After making some submissions and looking to the nature of allegations made against the Petitioner - accused No. 2 in so far as offence punishable u/s 3(1)(x) of the Atrocities Act is concerned, Mr. Barot, learned advocate appearing on behalf of the Respondent No. 2 - original complainant has submitted that in the peculiar facts and circumstances of the case, if the impugned FIR of the offences punishable u/s 3(1)(x) of the Atrocities Act against the Petitioner - original accused No. 2, is quashed and set aside, he has no objection and for that, he does not invite any further reasoned order. However, he has requested to make suitable observations that the same shall be QUA Petitioner herein - original accused No. 2 only and the other accused, against whom specific averments and allegations are made in the complaints, shall not be entitled to take benefit of the same.

7. Mr.M.R. Mengdey, learned Additional Public Prosecutor has requested to pass appropriate order in so far as the offence punishable u/s 3(1)(x) of the Atrocities Act against the Petitioner is concerned.

8. In the peculiar facts and circumstances of the case and considering the allegations made against the Petitioner - original accused No. 2 in the impugned FIR for the offence punishable u/s 3(1)(x) of the Atrocities Act and considering the earlier correspondence annexed with the petition, and considering the stand taken by Mr. Pratik Barot, learned advocate appearing on behalf of the Respondent No. 2 - original complainant, it appears that to continue the complaint against the Petitioner for the offence punishable u/s 3(1)(x) of the Atrocities Act would be abuse of process of law and therefore, the impugned FIR qua for the offence punishable u/s 3(1)(x) of the Atrocities Act against the Petitioner deserves to be quashed and set aside.

9. While quashing the impugned FIR qua for the offence punishable u/s 3(1)(x) of the Atrocities Act against the Petitioner, this Court has not passed reasoned order, as the learned advocate appearing on behalf of the respective parties have requested not to assign reasons, as the investigation is going on and in case of filing of the Chargesheet, further trial is to be conducted.

10. In view of the above and for the reasons stated above, the impugned First Information Report being CR No. I-151 of 2010 filed by the Respondent No. 2 - original complainant with Chanasma Police Station against Petitioner herein - accused No. 2 is quashed and set in so far as the offences alleged against the Petitioner herein - original accused No. 2, for the punishable u/s 3(1)(x) of the Atrocities Act QUA Petitioner herein - original accused herein only and the rest of the First Information Report in question shall stand as it is for the other offences and for other offences, the impugned First Information Report is not quashed and set aside and the Petitioner herein - original complainant will have to face the trial for the offences other than the offence u/s 3(1)(x) of the Atrocities Act. This order is passed in view of the peculiar facts of the case and in view of the stand taken by the learned advocate appearing on behalf of the Respondent No. 2 - original accused for the Petitioner herein -original accused No. 2 only and hence the other accused shall not claim and shall not be entitled to claim benefit of this order. Rule is made absolute to the aforesaid extent.

11. Direct Service is permitted.