

(2020) 08 GUJ CK 0174

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 9441 Of 2020

Vahabbhai Usmanbhai Saiyed

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 114, 294(b), 504, 506(2)
Arms Act, 1959 — Section 30
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3, 3(1)(r), 3(1)(s), 3(2)(va)

Citation : (2020) 08 GUJ CK 0174

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

Bench : Single Bench

Advocate : M R Molavi, Imran H Pathan, Matihili Mehta

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

1. Heard Mr.M.R. Molavi, learned advocate for the petitioners, Mr. Imran Pathan, learned advocate for the respondent no.2- complainant and

Ms.Maithili Mehta, learned Additional Public Prosecutor for the respondent â?" State through Video Conferencing.

2. RULE. Ms.Mehta, learned Additional Public Prosecutor waives service of notice of rule for respondent â?" State. With the consent of learned

advocates for both the sides, rule is fixed forthwith.

3. The petitioner has filed the present petition under Section 482 of the Criminal Procedure Code for quashing and setting aside the FIR being

C.R.No.11217029200514 of 2020 registered with Sami Police Station, District: Patan for the offences under Sections 506(2), 504, 294(b) and 114 of

the Indian Penal Code and Section 30 of the Arms Act and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Prevention of Atrocity Act qua the present

petitioners as well as all consequential proceedings thereof.

4. Mr. Molavi, learned advocate for the petitioner has vehemently submitted that the FIR being C.R.No.11217029200514 of 2020 has been registered

with Sami Police Station, District: Patan for the offences under Sections 506(2), 504, 294(b) and 114 of the Indian Penal Code and Section 30 of the

Arms Act and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Prevention of Atrocity Act. According to him, the allegation against the petitioner is that on

12.05.2020, when the petitioner no.1 was cleaning fence (Kata Ni Vad) with shovel (Pavdo) of the complainant, whose land is also situated in the

same village, asked the petitioner No.1 why the complainant's Vad is being cleaned and thus the Petitioner No.1 used abusive language about caste

and petitioner Nos. 2, 3 and 4 gave threat. It is submitted by learned advocate for the petitioners that the FIR came to be lodged on 25.6.2020 and thus

the FIR has been lodged after delay of 13 days.

4.1 Mr. Molavi, learned advocate for the petitioners has vehemently submitted that considering the contention made in the FIR, the so-called abusive

word is used by the petitioner no.1 whereas so far as petitioner nos. 2, 3 and 4 are concerned, they have not used any such abusive words. He has

further submitted that the allegations made in the FIR is false and the complainant himself has illegally occupied the Government land and the

Petitioners are residing elsewhere and the allegations are false. The learned advocate for the applicants has relied upon the following decisions:

(i) Barot Prashant Narendrabhai v. State of Gujarat, reported in 2019 (0) AIJEL-HC-240673;

(ii) Anand Athabhai Chaudhari v. State of Gujarat, reported in 2019 (0) AIJEL-HC-240849;

(iii) Dhiren Prafulbhai Shah v. State of Gujarat, reported in 2016 (0) AIJEL-HC-235366;

(iv) Chimanbhai Naranbhai Lakhani v. State of Gujarat, reported in 2019 (0) AIJEL-HC-240914;

(v) Barot Prashant Narendrabhai v. State of Gujarat, reported in 2019 (0) AIJEL-HC-240673;

(vi) Anwar Ahmad Pathan v. State of Gujarat, reported in 2019 (0) AIJEL-

HC-241280;

(vii) Pravinbhai Gordhanbhai Patel v. State of Gujarat, reported in 2019 (0) AIJEL-HC-240673;

While relying upon the aforesaid decisions, learned advocate for the petitioners has urged to allow the present petition.

4.2 Mr.Molavi, learned advocate for the petitioner has further submitted that he does not press the petition for petitioner no.1 and only press for petitioner Nos. 2, 3 and 4.

5. Per contra, Ms.Mehta, learned Additional Public Prosecutor for the respondent â?" State has submitted that considering the materials placed on

record and the role of the present petitioners, the present petition may not be entertained. She has also submitted that the petitioners can approach for

bail before the concerned Court and quashing of FIR is not the recourse to be adopted by the Petitioners. She has prayed to dismiss the present petition.

6. Mr. Imran Pathan, learned advocate for the respondent -complainant has vehemently submitted that the abusive words were used by the Petitioner

No.1 whereas petitioner Nos. 2, 3 and 4 have given threats only and therefore, Section 114 of the Indian Penal Code are made applicable and all the

accused will have to face trial which may include the offence under provisions of Atrocity Act. While referring the judgments which are relied on by

the learned advocate for the petitioners, he has submitted that the factual aspect of those judgments are different from present one as in those

judgments, there were no case under the provisions of Arms Act and in the present case, provisions under the Arms Act is made applicable and

considering the facts and circumstances, the petition may be dismissed and no relief be granted to the petitioners.

7. It is settled law that for considering the petition under Section 482 of the Code, it is necessary to consider as to whether the allegations in the

complaint prima facie make out a case or not and the Court is not to scrutinize the allegations for the purpose of deciding whether such allegations are

likely to be upheld in trial. It is also well settled that though the High Court possesses inherent powers under Section 482 of the Code, these powers

are meant to do real and substantial justice, for the administration of which alone it exists or to prevent abuse of the process of the court. The

Supreme Court, time and again, has observed that extraordinary power should be exercised sparingly and with great care and caution. The High Court would be justified in exercising the said power when it is imperative to exercise the same in order to prevent injustice.

8. The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code.

The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code.

9. A court exercising its inherent jurisdiction must examine if on their face, the averments made in the complaint constitute the ingredients necessary for the offence.

10. Now, considering the averments made in the petition as well as materials placed on record and the contention raised by both the sides and the fact of the judgments relied upon, it appears that this Court has earlier granted relief to certain other persons on the basis of the factual aspects in those cases and accordingly the FIR was quashed. It is pertinent to note that fact of those cases are different from the present case. However, in the present case, FIR itself states that abusive words were used by petitioner no.1 and whereas no allegations of derogatory words qua the complainant by other petitioners is there in FIR. However, it also appears from the FIR that there are other offences including offence under Section 504, 294(b), 506(2) and 114 of the IPC. Considering the content of the FIR, at this stage, the FIR containing the offence under Section of Indian Penal Code as well as Arms Act cannot be granted and those offences are required to be investigated and to be tried by concerned Court. However, so far as offence under Section 3 of the Atrocity Act is concerned, relief to petitioner nos.

2, 3 and 4 is concerned, FIR to that extent only for petitioner nos. 2 ,

3 and 4 can be entertained. However, all the petitioners will have to face the trial under Sections of Indian Penal Code as well as Arms Act.

Therefore, in view of the aforesaid legal preposition and the materials placed on record, considering the peculiar facts of the case, this Court is of the

considered opinion that the present petition qua the present petitioners is required to be partly allowed.

11. In the result, the petition is partly allowed. The Petition filed by the Petitioner No.1 has not been pressed and hence dismissed. The contents of

FIR with regard to provisions of Atrocity Act for the petitioner namely Anasbhai Vahabbhai Saiyed, Mahamadsad Vahabbhai Saiyed and Vahid

Vahabbhai Saiyed are quashed and set-aside. However, FIR related to other offences shall stand and all the accused shall face the trial. Rule is made

absolute to the aforesaid extent.

13. Registry is directed to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode.