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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 17475 of 2017
With
R/CRIMINAL MISC.APPLICATION NO. 18054 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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RAKESHBHAI DULABHAI DHAMELIYA
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR. HARDIK J JANI(6497) for the Applicant(s) No. 1
MANAN K PANERI(7959) for the Respondent(s) No. 2
MR. DHAWAN JAYSWAL, LD. ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1
RULE NOT RECD BACK for the Respondent(s) No. 3

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CORAM:**HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**

Date : 06/05/2024

CAV JUDGMENT

1. Since the challenge in both the captioned applications

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are to the selfsame FIR, those were heard analogously and are being disposed of by this common judgment and order.

2. By these applications under section 482 of the Code of Criminal Procedure,1973, the applicants seek to invoke the inherent powers of this Court praying for quashing of the first information report being C.R. No.I-116 of 2016 registered before the Sarthana Police Station, Surat for the offence punishable under sections 306, 120B and 114 of the Indian Penal Code.

3. Learned advocate Mr. Hardik Jani appearing for the applicants submits that so far as the applicant of Criminal Misc. Application No.17475 of 2017 is concerned, he is the person who allegedy got engaged with the wife of the deceased before solemnization of their marriage and has nothing to do with the present offence and has no any direct connection with the deceased. Learned advocate Mr. Jani submits that allegations levelled in the FIR against him are that the said applicant, in connivance with the other accused persons, hatched a criminal conspiracy, and as a part of the said conspiracy, the applicant herein created a fake face book account in the name of one Kajal and sent a friendship request to the deceased. After chatting for some time, the applicant herein, showing himself as Kajal, called the deceased to meet her at a particular place and when the deceased went to meet her, the accused No.1-Ashaben (wife of the deceased) also went there and caught the deceased red-handed alleging extramarital affair with another lady. Learned advocate Mr. Jani submits that except this, no other any allegations have been

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levelled against the applicant. All the allegations made against the applicant appears to be general in nature. Thus, if the entire case of the prosecution is accepted as true, no case is made out worth the name to prosecute the applicant and put him to trial for the offence of abeting the commission of suicide. Learned advocate Mr. Jani also submits that the applicant-accused never met the deceased at any point time and even there is nothing on record insinuating any act of instigation at the end of the applicant to the deceased proximate to the occurrence of the incident. He submits that thus, for any unknown reason, if the deceased committed suicide, then by any stretch of imagination, it cannot be said that the applicant herein abetted the commission of suicide.

4. Now so far as the applicants of Criminal Misc. Application No.18054 of 2017 are concerned, the applicant No.1 happens to be the wife of the deceased and the applicant No.2 happens to be the brother-in-law of the decease. The allegations against them are to the effect that keeping doubt upon the deceased that he had an extramarital affair with some another lady, disputes cropped up between the deceased and the applicant No.1, due to which, the applicant No.1 left her matrimonial home. He further submits that out of the wedlock, two children are born, namely, daughter Suhani and son Aarav who were aged about 9 years 4 years respectively at the time of the incident. Learned advocate Mr. Jani also submits that the deceased left behind one suicide note wherein it is stated that prior to their marriage, the applicant No.1 had relations with one Rakeshbhai Dulabhai Dhameliya, i.e, the sole applicant of

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the connected matter and, in collusion with Rakeshbhai, the applicants herein hatched a criminal conspiracy and created a fake face book account in the name of one Kajal and made a friendship with the deceased. Then, as per the plan, Rakesh in the name of Kajal called the deceased to meet her at a particular place and when the deceased reached there, the applicant No.1 along with her cousin brother also reached there and caught the deceased and beaten him alleging that he has an extramarital affair with another lady. Thereafter, they started harassing the deceased mentally and physically. Learned advocate Mr. Jani submits that, in fact, from the day when the deceased was caught red-handed by the applicant No.1, they decided to reside separately. Not only that they also executed a divorce deed in the presence of two witnesses on 10.08.2014. Learned advocate Mr. Jani further submits that at the time of registration of the complaint, the complainant has produced the suicide note left behind by the deceased, and with a view to check the veracity of the said suicide note, the concerned Investigating Officer asked certain documents from the complainant containing the signature and handwriting of the deceased, however, the said documents sought for by the investigating officer have not been supplied by the complainant and, therefore, his statement in this regard also came to be recorded wherein he has very categorically stated that he has tried his level best to find out the document purportedly written by the deceased but despite his best efforts, he could not be able to trace out any such documents and, therefore, he is not in a position to supply the said documents. Learned advocate Mr. Jani also submits that,

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therefore, in the absence of those important materials/documents, the Investigating Officer was not in a position to obtain the handwriting expert's opinion as to whether the handwriting on the suicide note was of the deceased or not. He further submits that even before registration of the impugned FIR, the applicant No.1 also filed a complaint before the Police Commissioner, Surat alleging physical and mental torture meted out to her by the deceased and his family members as also making false allegations about the character of the applicant No.1. Immediately after registration of the aforesaid complaint, the impugned FIR was lodged by the father of the deceased. Pursuant to the registration of the impugned FIR, the applicants approached this Court by way of filing the present application and obtained order of stay.

5. Learned advocate Mr. Jani submits that during the pendency of the present proceedings, the matter has been amicably settled between the parties and an affidavit in this regard has also been filed by the complainant stating that he has no objection if the entire proceedings instituted by him against the applicants are quashed and set aside.

6. In such circumstances, referred to above, learned advocate Mr. Jani prays that there being merit in his applications, the same be allowed and the impugned FIR be quashed and set aside.

7. Learned advocate Mr. Manan Paneri appearing for the respondent No.2 submits that the parties have mutually

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arrived at an amicable settlement which has also been reduced into writing by way of filing an affidavit duly affirmed by the complainant and, therefore, his client has no objection if the present applications are allowed and the impugned FIR and all the consequential proceedings arising out of the same are quashed and set aside.

8. On the other hand, these applications have been opposed by learned APP Mr. Dhawan Jayswal appearing for the State and submits that the materials on record do disclose prima facie case for prosecuting the applicants and putting them to trial for the offence under Section 306 of the IPC. He further submits that the specific role of the applicants is clearly made out from the body of the complaint. Learned APP also submits that due to the present incident, one innocent person has lost his life and at the time of committing suicide, the deceased has left behind one suicide note which makes out a prima facie case against the applicants and, therefore, solely on the ground of settlement being taken place between the private parties, the entire proceedings cannot be quashed against the culprits as the offence under Section 306 is a heinous offence and should be considered as a crime against the society and not against an individual. To substantiate his aforesaid submissions, learned APP has put reliance upon the decision of the Apex Court in case of ***Daxaben Vs. State of Gujarat***, AIR 2022 SC 3530. He also submits this is not a stage where minute and meticulous exercise with regard to the appreciation of evidence may be done and fruitfulness of the allegations could only be tested in a trial and therefore, when

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prima facie case is made out, the applications are liable to be dismissed.

9. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is, whether the FIR should be quashed?

10. It is no doubt true that the offene under Section 306 comes under the category of heinous offences and has to be dealt with very cautiously, however, at the same time, the Court also has to keep in mind the compromise, if any, arrived at between the parties as the sole intention of the Court of law should be to ensure that the disputes are put to an end and peace is restored as securing the ends of justice is the ultimate guiding factor. In this regard, I would like to refer to and rely upon the decision of the Hon'ble Supreme Court in the case of ***Gian Singh v. State of Punjab and Another***, (2012) 10 SCC 303, wherein the Hon'ble Apex Court has observed that while exercising inherent powers under Section 482 Cr.P.C. in respect of quashing of an FIR where parties have entered into amicable resolution of the disputes, one of the considerations would be whether it would be unfair or contrary to the interest of justice to continue the criminal proceedings despite the compromise and if the answer to the question is in the affirmative, the High Court would be well within its jurisdiction to quash the criminal proceedings, in order to ensure that the disputes are put to an end and peace is restored as securing the ends of justice is the ultimate guiding factor. This was of-course with a caveat that heinous and serious offences of

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mental depravity or offences like murder, dacoity etc. cannot be fittingly quashed even though the victim or the victim's family settles the disputes with the offender. The relevant paragraphs of the said judgment are as under:-

> *"55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.*
>
> *xxx xxx xxx*
>
> *58. Where the High Court quashes a criminal proceeding having regard to the fact 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 well-being of the society and it is not safe to leave the crime-doer 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*

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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 flavour 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.

xxx xxx xxx

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 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.

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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 flavour 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 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."

11. The aforesaid dictum of law has been consistently followed by the Hon'ble Supreme Court, and in the context of matrimonial disputes, it would be relevant to refer to the

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observations of the Supreme Court in the case of ***Jitendra Raghuvanshi and Others v. Babita Raghuvanshi and Another***, (2013) 4 SCC 58, relevant paragraphs of which are as follows:-

> *"15. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.*
>
> *16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising their extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of court or that the ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass*

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such orders."

12. Here in the case on hand, the matter has been amicably settled between the parties and the respondent No.2-original complainant is no longer desirous of prosecuting the first information report further. The respondent No.2-Chhaganbhai Dahyabhai Beladiya is personally present and he confirms about the settlement arrived at with the accused persons. The respondent No.2 is also identified by his learned advocate Mr. Manan Paneri. The respondent No.2- Chhaganbhai Dahyabhai Beladiya has also filed an affidavit, inter alia, stating as under:

> *"I, Chhaganbhai Dahyabhai Beladiya, Aged 65 years, Male, residing at B/45, Parvati Nagar, Sarthana Jakatnaka, Surat, the Respondent No.2-Complainant herein do hereby solemnly affirm on oath and state that:*
>
> *1. I am the original complainant of the F.I.R No. CR. No.I/116/2016 dated 27.08.2016 registered before the Sarthana Police Station-District: Surat under Section 306, 120B and 114 of the Indian Penal Code, 1860. The investigating officer has completed the investigation and has filed charge sheet before which has culminated into Sessions Case No.258 of 2021 and the same is pending before the learned 6th Additional District & Sessions Judge, Surat.*
>
> *2. I state and submit that during pending of the aforesaid Criminal Case, I and petitioners herein being the original accused No.1 and 2 have arrived at an amicable settlement and no dispute subsists between the parties. I, therefore, have no objection if the FIR and proceedings arising out of its being Sessions Case No.258 of 2021 pending before the learned 6th Additional District & Sessions Judge, Surat and all the proceedings incidental thereto against the petitioners is quashed and set aside.*

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3. I further state and submit that, I am filing this affidavit out of free will, without any coercion or pressure.

Solemnly affirmed on oath on this 26th day of October, 2023 at Ahmedabad."

13. The applicants are charged with Section 306 of the IPC. Section 306 provides that whoever abets the commission of suicide, shall be punished with the imprisonment and shall also be liable to fine. The essential ingredients of offence under Section 306 of the IPC are (i) abetment, (ii) intention of the accused to aid or instigate or abet the deceased to commit suicide. Mere harassment by itself would not constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. In other words, there must be a proof of direct or indirect act(s) of incitement to the commission of the suicide and therefore, whether a person has abetted to commit a suicide or not could only be gathered from the facts and circumstances of each case.

14. Applying the aforesaid judgments to the present case, this Court is also of the view that continuing the proceedings against the applicants, after the dispute has been amicably settled and compromised, would be an abuse of process of law and would not be in the interest of the parties.

15. Now so far as the judgment relied upon by the learned APP in the case of Daxaben (supra) is concerned, the same would not be of any avail to the State as in the said case, the Hon'ble Supreme Court has restrained itself from examining the question as to whether the FIR impugned therein discloses

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any offence under Section 306 of the IPC or not, and reversed the judgment of the High Court solely on the ground of some financial settlement being taken place between the complainant and the accused therein in the peculiar facts and circumstances of that case. Here, in the case on hand, from the affidavit filed by the complainant, it appears that there is no monetary settlement between the parties, and with the passage of time, the parties might have understood the things and the truth might have come on fore and, therefore, they might have decided to come to truce and bury their differences amicably being tired of counterclaims instituted by them against each other. Thus, now no fruitful purpose would be served to ask the applicants-accused to face the trial.

16. In the result, both the applications succeed and are hereby allowed. The first information report being C.R. No. I-116 of 2016 registered before the Sarthana Police Station, Surat is hereby ordered to be quashed qua the applicants of both the applications. All consequential proceedings arising from the same also stands terminated. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(DIVYESH A. JOSHI,J)

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