



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 8068 of 2021**

VISHAL KIRTIBHAI THAKKAR
Versus
STATE OF GUJARAT & ANR.

Appearance:

MS MITA S PANCHAL(530) for the Applicant(s) No. 1

MR HARDIK A DAVE(3764) for the Respondent(s) No. 2

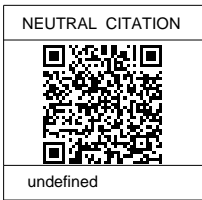
MS DIVYANGNA JHALA, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 14/06/2024

ORAL ORDER

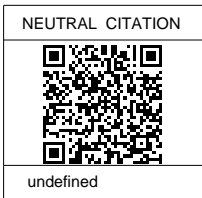
1. Heard learned advocates for the respective parties.
2. **RULE.** Learned advocates waive service of notice of rule on behalf of the respective respondents.
3. Considering the facts and circumstances of the case and since it is jointly stated at the Bar by learned advocates on both the sides that the dispute between the parties has been resolved amicably, this matter is taken up for final disposal forthwith.
4. By way of this petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"), the petitioner/s have prayed to quash and set aside the FIR being **CR No.A-11210050211583 of 2021 registered with Rander Police Station, Surat City** for the offences punishable under Sections 506(2) and 114 of the Indian Penal Code, 1860 and 39, 40, 42 (d),



(e) of the Gujarat Money and to quash all other consequential proceedings arising therefrom.

5. Learned advocates for the respective parties submitted that during the pendency of proceedings, the parties have settled the dispute amicably and pursuant to such mutual settlement, as the original complainant has expired, the legal heirs of the original complainant viz. Rajeshree Kirankumar Trivedi and Krishna Kirankumar Trivedi have personally remained present through the advocate and filed Affidavits, wherein they have confirmed the fact of the settlement. In the Affidavits, the legal heirs have categorically stated that the dispute with the petitioner/s has been resolved amicably and that he has no objection, if the present proceedings are quashed and set aside since there is no surviving grievance between them.

6. Learned Counsel for the petitioner has submitted that the present petitioner was not involved in the alleged crime and no offence was committed by him and petitioner is having no past criminal antecedents. It is alleged in the complaint that petitioner was lended the money to the Original Complainant in the year 2019 and by issuing cheque dated 22.11.2019 from his Bank, worth Rs.50,000/- and Rs.20,000/- cash on dated 10.12.2019 to repay at the rate of 18% interest yearly, in this regard, promissory note was executed in favour of the present petitioner by the original complainant deceased. Initially, he paid some interest and subsequently, he failed to paid interest in the amount. Thereafter, the complainant issued a cheque in favour of

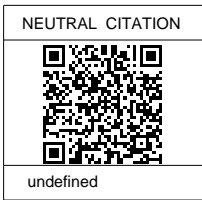


Vishal Finance Firm, which was bounced due to insufficient funds. It appears that petitioner is doing the business of money lending in the name of Vishal Finance Firm and he is having a valid licence, therefore, the question does not arise to lend the money illegally and no offence is made out. It appears that there is no threat administered by the present petitioner to the respondent. To recover the amount petitioner has also initiated the proceedings under Section 138 of NI Act before the Court of learned Addl. Chief Judicial Magistrate. In view of above, she has requested to quash and set aside the present proceedings. During the pendency of the present petition, settlement took place between the parties and legal heirs of the original complainant do not want to continue with the proceedings.

7. Learned APP has vehemently opposed the petition and submitted that offence is serious one and charge-sheet is filed after the investigation. Considering the role attributed to the present petitioner, the learned APP has requested to dismiss the present petition.

8. Considering the nature of allegations, it appears that the petitioner is engaged in the activity of money lending and he is having a valid licence. Therefore, the question does not arise to lend the money illegally. Even prior to filing of the charge-sheet, no any permission being sought for the competent authority.

8.1. Considering the fact that offence are private nature and not against the State. Petitioner is having no past criminal



antecedents. In view of above, the present petition deserves consideration.

9. It is necessary to consider whether the power conferred by the High Court under section 482 of the CrPC is warranted. It is true that the powers under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage as the Hon'ble Supreme Court has decided in the case of **Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS & Anr.**, reported in **AIR 2006 SC 2872**.

10. Having heard learned advocates on both the sides and considering the facts and circumstances of the case as also the principle laid down by the Apex Court in the cases of **(i) Gian Singh Vs. State of Punjab & Anr.**, reported in **(2012) 10 SCC 303**, **(ii) Madan Mohan Abbot Vs. State of Punjab**, reported in **(2008)**



4 SCC 582, (iii) Nikhil Merchant Vs. Central Bureau of Investigation & Anr., reported in **2009 (1) GLH 31**, **(iv) Manoj Sharma Vs. State & Ors.**, reported in **2009 (1) GLH 190** and **(v) Narinder Singh & Ors. Vs. State of Punjab & Anr.** reported in **2014 (2) Crime 67 (SC)**, in the opinion of this Court, the further continuation of criminal proceedings against the petitioner/s in relation to the impugned FIR would cause unnecessary harassment to the petitioner/s. Further, the continuance of trial pursuant to the mutual settlement arrived at between the parties would be a futile exercise. Hence, to secure the ends of justice, it would be appropriate to quash and set aside the impugned FIR and all consequential proceedings initiated in pursuance thereof under Section 482 of the Cr.P.C..

10.1. So far as offence under Sections 504 and 506 of IPC are concerned, the learned Apex Court in the case of **Mohammad Wajid and Anr. v. State of U.P. and Ors.**, reported in **2023 LiveLaw (SC) 624: 2023 INSC 683**, has held that:

“27. A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant.”

10.2. It would be further apposite to refer the decisions of the Gujarat High Court as well as Apex Court rendered in case of (i) **Pravinbhai Becherbhai Vankar and Ors. vs State Of Gujarat** reported in **2007(1) GLR 337** and in case of (ii) **Manik Taneja & Anr vs State Of Karnataka & Anr.** reported in **(2015) 7 SCC 423**,



wherein it is observed that; *“in the case of criminal intimidation the threat of injury or the mens rea to cause alarm, or to compel a person to do or omit or to do something is must. Herein no any action or the act on the part of accused is lacking”*

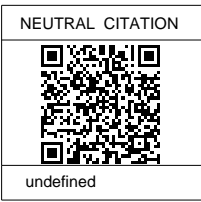
10.3. In case of **Manik Taneja** (supra), para 11 is required to be reproduced:

“11. Section 506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in Section 503 IPC is as under:-

"503. Criminal Intimidation.- *Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.*

Explanation.- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

A reading of the definition of "Criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do."



11. In the result, petition is allowed. The impugned FIR being **CR No.A-11210050211583 of 2021 registered with Rander Police Station, Surat City** as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside *qua* the petitioner/s herein. If the petitioner/s is in jail, the jail authority concerned is directed to release the petitioner/s forthwith, if not required in connection with any other case. Rule is made absolute to the aforesaid extent only. Direct service is permitted.

KUMAR ALOK

(HASMUKH D. SUTHAR,J)