

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 5516 of 2024**

DHAVAL MAHESHCHANDRA AGRAWAL

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR PREM D DAVE(10958) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MR MANAN MEHTA, APP for the Respondent(s) No. 1

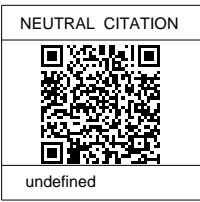
CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 06/05/2024****ORAL ORDER**

1. Learned advocate Mr. Jaydevsinh Chudasama states that he has instructions to appear on behalf of the original complainant and thereby, seeks permission to file his Vakalatnama, which is granted.

2. RULE. Learned advocates waive service of note 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.

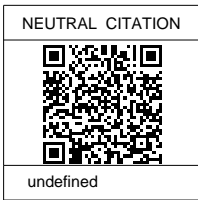
4. By way of this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."), the applicants have prayed to quash and set aside the complaint



being FIR C.R. No. I-407/2019 registered with Salabatpura Police Station, Surat City for the offences under Sections 406 and 420 of the Indian Penal Code, 1860 and all the 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, the original complainant has also filed an Affidavit, which is taken / placed on record. In the Affidavit, the original complainant has categorically stated that the dispute with the applicant/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. There is no any past antecedent against the present petitioner.

6. Having heard learned advocates on both the sides and considering the facts and circumstances of the case, It appears that Respondent No. 2 herein is engaged in the business of textile manufacturing and frequently visits the textile market situated at Ring Road, Surat. At the behest of one broker, namely Mohsin Chaya, the complainant met the present applicant. The applicant stated that he is engaged in the textile business on a large scale under the name of Sadguru Fabrics. Upon trusting the present applicant, the complainant provided goods totaling Rs. 22,63,719 from different firms with the promise of payment within 120 days. When the payment was not received, the complainant contacted the applicant, but the applicant shrugged off his demand. After an inquiry, the complainant discovered that 41 other persons have been cheated



by the applicant, leading to the present complaint. However, the matter is amicably settled between the parties and in this regard the complainant and other 41 witnesses filed the affidavits on record stating that they have no objection if the complaint is quashed. In view of the above, no fruitful purpose would be served to proceed further in the matter.

7. In view of 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 applicant/s in relation to the impugned FIR would cause unnecessary harassment to the applicant/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..

8. In view of the above, the Court deems it appropriate to refer to the judgment passed by the Honorable Apex Court in the case of **Prabhat Kumar Mishra @ Prabhat Mishra vs The State Of U.P.**, reported in (2024) 3 SCC 665, wherein the Apex Court held that:



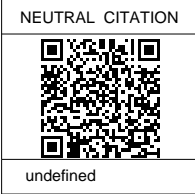
“Criminal Procedure Code, 1973- S. 482- Quashment of FIR/Complaint – When warranted – Law summarized: where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the High Court should exercise the jurisdiction under S. 482 CrPC and quash the complaint.

Further, the High Court, held, should also quash the complaint, where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, continuation of proceeding, held, cannot be permitted

Further held, it would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice and, thus, exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice

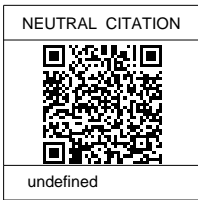
Further held, when no offence is disclosed by the complaint, the court may examine the question of fact and when a complaint is sought to be quashed, court is empowered to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

9. Further, essential dispute of civil nature is given a cloak of criminality then dispute can be quashed by exercising the powers under Section 482 of the CrPC. In this regard reference is required to be made to the decision of the Hon’ble Supreme Court in the case of **(i) Paramjeet Batra vs. State of Uttarakhand reported in (2013) 11 SCC 673 (Para 12); (ii) Usha Chakravarti**



vs. State of West Bengal reported in 2023 SCC OnLine 90; and (iii) Naresh Kumar vs. State of Karnataka reported in 2024 INSC 196. Insofar as offence under Section 420 of the IPC is concerned, it is appropriate to refer to the decision of the Hon'ble Apex Court in the case of **Rekha Jain vs. The State of Karnataka & Anr. reported in 2022 LiveLaw (SC) 468**, wherein the Hon'ble Supreme Court held that, to make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person. Further, in the case of **Sarabjit Kaur vs. State of Punjab & Anr. reported in (2023)5 SCC 360** has held in paragraph No.13 as follows:

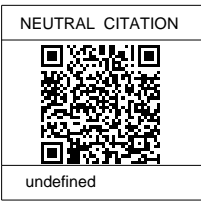
“13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was



filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court.”

Further, in the case of **Vesa Holdings (P) Ltd. vs. State of Kerala reported in (2015)8 SCC 293** it is observed and held that every breach of contract would not give rise to the offence of cheating and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise. 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. In the aforesaid backdrop, complaint is filed. It is necessary to consider whether the power conferred by the High Court under section 482 of the Code of Criminal Procedure 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.

11. In the result, the application is allowed. The impugned 11 complaint being **C.R. No. I-407/2019 registered with Salabatpura Police Station, Surat City** as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside qua the applicants herein. Rule is made absolute. Direct service is permitted. If the applicant is in jail, the jail authority concerned is directed to release the applicant forthwith, if not required in connection with any other case.

ALI

(HASMUKH D. SUTHAR,J)