



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 5637 of 2024

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KALPESHBHAI BHIKHABHAI DESAI (RABARI) & ANR.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR VIJAYBHAI S DESAI(10824) for the Applicant(s) No. 1

MS KIRAN R UDASI(12127) for the Applicant(s) No. 1,2

for the Respondent(s) No. 2

MR KANVA ANTANI, ADDL. PUBLIC PROSECUTOR for the Respondent(s)
No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 09/05/2024

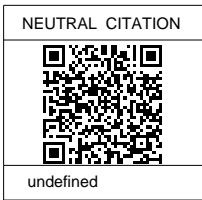
ORAL ORDER

[1.0] Learned advocate Mr. Chintan Adeshara states that he has instructions to appear on behalf of the original complainant and seeks permission to file his Vakalatnama, which is granted. Heard learned advocates for the respective parties.

[2.0] **RULE.** Learned advocates waive service of note of rule on behalf of the respective respondents.

[3.0] 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.

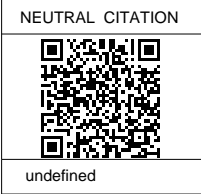
[4.0] By way of this petition under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of



Criminal Procedure, 1973 (hereinafter referred to as “CrPC”), the petitioners have prayed to quash and set aside the FIR being **I-CR No.50 of 2018 registered with Bopal Police Station, Ahmedabad (Rural)** for the offences punishable under Sections 384, 323, 506(2), 504, 507 and 114 of the IPC and sections 40 and 42 of the Gujarat Money Lenders Act, 2011 and to quash all other consequential proceedings including Criminal Case No.4975 of 2019 pending in the Court of learned Chief Judicial Magistrate, Ahmedabad (Rural).

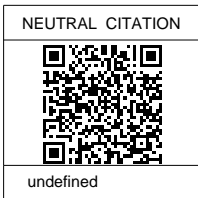
[5.0] Learned advocates for the respective parties submitted that during the pendency of proceedings, the parties have settled the dispute amicably and pursuant to such mutual settlement, the original complainant has also filed an Affidavit dated 02.05.2024 which is produced with the petition at Annexure-C. In the Affidavit, the original complainant has categorically stated that the dispute with the petitioner 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.

[6.0] Going through the charge-sheet it appears that impugned FIR is filed at the instance of respondent No.2 wherein it is alleged that accused Nos.1, 3, 4, 5 and 6 lent money on higher rate of interest to the complainant and then accused Nos.3, 4 and 5 have forcibly took the possession of cars of the complainant and forcefully received blank cheques of the complainant and took signatures of complainant on blank papers with a view to



extort money and have also hurled abuses to the complainant and in this regard, impugned proceeding came to be filed. After the investigation, charge-sheet came to be filed which culminated into Criminal Case No.4975/2019 which is pending in the Court of learned Chief Judicial Magistrate, Ahmedabad (Rural).

[7.0] 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**.



[8.0] 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)** as also considering the fact that impugned FIR is filed in connection with money transaction that took place between the accused and the complainant. Further, now the dispute is amicably settled and there is no chance of breach of public tranquility and hence, in the opinion of this Court, the further continuation of criminal proceedings against the present petitioners in relation to the impugned FIR would cause unnecessary harassment to the petitioners. Further, even the complainant has affirmed the fact of settlement and filing of affidavit by him. Hence, continuance of trial pursuant to the mutual settlement arrived at between the parties would be a futile exercise.

[8.1] Further, the impugned proceedings *qua* accused Nos.5 and 6 have been quashed by the coordinate Bench vide order dated 22.10.2019 and 09.01.2020 passed respectively in Criminal Misc. Application No.20254/2019 and 22982/2019. It is pertinent to note that the role attributed to the present petitioners is similar



to the co-accused *qua* whom impugned proceedings have already been quashed by the coordinate Bench. 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.. It is also appropriate to refer to the decision of the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal** reported in **(1992) Supp (1) SCC 335** wherein it has been observed and held as under:

“(5) 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;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;”

[8.2] Insofar as allegation of offence punishable under Section 506(2) of the IPC is concerned, the Hon'ble 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 as follows:

“Indian Penal Code, 1860; Section 504 - Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace



of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant - In judging whether particular abusive language is attracted by Section 504, IPC, the court has to find out what, in the ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant. (Para 25- 26)

Indian Penal Code, 1860; Section 504 - One of the essential elements for constituting an offence under Section 504 of the IPC is that there should have been an act or conduct amounting to intentional insult. Where that act is the use of the abusive words, it is necessary to know what those words were in order to decide whether the use of those words amounted to intentional insult. In the absence of these words, it is not possible to decide whether the ingredient of intentional insult is present. (Para 28)

Indian Penal Code, 1860; Section 506 - 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. (Para 27) 3 Interpretation of Statutes- All penal statutes are to be construed strictly - Court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the words. (Para 19- 21)”

[9.0] In the result, petition is allowed. The impugned FIR being I-CR No.50 of 2018 registered with Bopal Police Station,



Ahmedabad (Rural) as well as all consequential proceedings, including the charge-sheet numbered as Criminal Case No.4975/2019 pending in the Court of learned Chief Judicial Magistrate, Ahmedabad (Rural) are hereby quashed and set aside *qua* the petitioners herein. If the petitioners are in jail, the jail authority concerned is directed to release the petitioners forthwith, if not required in connection with any other case. Rule is made absolute to the aforesaid extent only. Direct service is permitted.

(HASMUKH D. SUTHAR, J.)

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