

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 5669 of 2024

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GAURAVBHAI RAMESHBHAI PATEL & ANR.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR PK JANI, SR. ADVOCATE with MR DHARUV K DAVE(6928) for the Applicant(s) No. 1,2

for the Respondent(s) No. 2

MR KANVA ANTANI, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

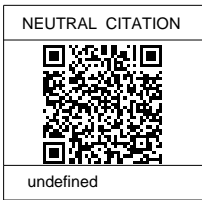
Date : 09/05/2024

ORAL ORDER

1. Learned advocate Mr. Nilay Thaker states that he has instructions to appear on behalf of the original complainant and thereby, seeks permission to file his Vakalatnama, which is granted. Registry to accept the same. Heard learned advocates for the respective parties.

2. **RULE.** Learned advocates waive service of notice of rule on behalf of the respective respondents forthwith. 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 hearing.

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



the complaint being FIR **C.R. No.11196041240136 of 2024 registered with Akota Police Station, Vadodara City** filed at the instance of respondent No.2 for the offences under Sections 406, 420, 465, 467, 468, 120(B) of the Indian Penal Code, 1860 and all the consequential proceedings arising therefrom.

4. Heard learned Senior Counsel Mr. P.K. Jani assisted by learned advocate Mr. Dhruv Dave for the petitioners, learned APP for respondent No.1 - State of Gujarat and learned advocate Mr. Nilay Thaker for respondent No.2.

5. Learned Advocates for the respective parties have 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 petitioners has been resolved amicably and that he has no objection, if the present proceedings are quashed and set aside since there is no grievance surviving between them.

6. Having heard learned advocates on both the sides and considering the facts and circumstances of the case, It appears that in the complaint, the complainant alleges that, he met accused no. 1 and accused no. 2 on the date 02.02.2022 for the purpose of immigration for him and his family. It is further alleged that, the complainant agreed to pay an amount of Rs. 40,30,000/- to immigrate themselves and their family. The



accused also persuaded the informant to bring their family along. Furthermore, it is alleged that the informant informed their associate, Mr. Nehal, to provide 30,000 Canadian dollars to accused no. 4, and this amount was provided. Subsequently, an additional amount of C\$ 35,000 was demanded. However, as alleged, the complainant paid 10 lakh cash, which was supposed to be given to petitioner no. 1 herein. It is also alleged that the complainant paid an amount to accused no. 1 and accused no. 2. Additionally, it is alleged that accused no. 1 created a false document regarding the wife of the complainant, leading to the lodging of the complaint. The allegation of forgery *qua* documents is concerned, is not against the present accused / petitioners. Even, alleged forgery is not of valuable security also. It pertains to forgery of job letter, nomination and *qua* training certificate. However, now the matter has been amicably settled between the parties, and even the complainant has filed an affidavit stating that he has no objection if the complaint is quashed. In view of the above, no fruitful purpose would be served by proceeding with 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.**

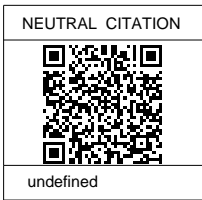


reported in **2014 (2) Crime 67 (SC)**, in the opinion of this Court, the further continuation of criminal proceedings against the petitioners in relation to the impugned FIR would cause unnecessary harassment to the petitioners. Offence is private in nature and not against the State. Even, the complainant has filed an affidavit stating that he has received the money and has also affirmed the factum of settlement. Further, the continuance of trial pursuant to the mutual settlement arrived at between the parties would be a futile exercise. Even, the learned advocate for the petitioners, under the instructions from the petitioners, has stated that petitioners are not having past antecedent. 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



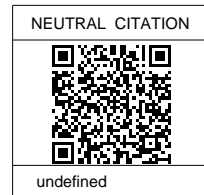
same do not disclose the commission of any offence and make out a case against the accused Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding 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. 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

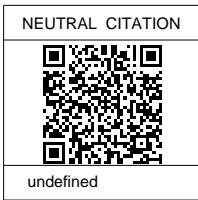


prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 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.”

10. 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;

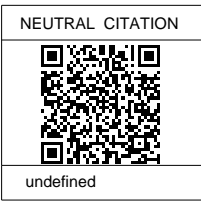
(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the



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;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. 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**.



12. In the result, petition is allowed. The impugned complaint being **C.R. No.11196041240136 of 2024 registered with Akota Police Station, Vadodara City** as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside **qua the present petitioners only**. Rule is made absolute. Direct service is permitted. 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.

ALI

(HASMUKH D. SUTHAR,J)