

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE  
FIR/ORDER) NO. 7494 of 2024**

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VISHAL MAHAJAN S/O PRAMODH KUMAR & ANR.  
Versus  
STATE OF GUJARAT & ANR.

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**Appearance:**

MR ZUBIN F BHARDA(159) for the Applicant(s) No. 1,2  
for the Respondent(s) No. 2  
MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

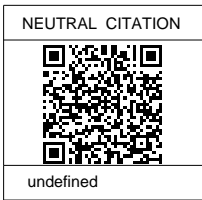
**Date : 23/04/2024**  
**ORAL ORDER**

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

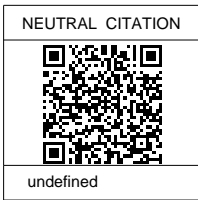
4. By way of this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."),



the applicant has prayed to quash and set aside the complaint being FIR C.R. No.11196030230827 of 2023 registered with **Sayajiganj Police Station, Vadodara** for the offences under Sections 406, 420, 114 of 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.

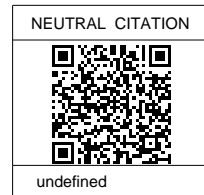
6. Having heard learned advocates on both the sides and considering the facts and circumstances of the case, It appears that the complainant, operating under the business name Blueberry, engaged in buying and selling new mobile phones and had business dealings with Vishal Mahajan and Vinay Dhingra of Inayat Electronics. Upon discovering that the complainant had Mi Company phones, the accused approached, promising timely payment. On 19.04.2023, the complainant dispatched 150 phones worth Rs. 31,85,000/-, and later, on 22.04.2023, fulfilled the accused's request for 158 Mi phones valued at Rs. 33,77,500/-. Despite assurances of payment within 2 to 3 days, the accused failed to fulfill this promise, offering excuses instead. After multiple attempts to secure payment, the



complainant visited the accused, and they returned 68 phones worth Rs. 14,96,000/-, with the accused assuring payment of the remaining Rs. 50,66,500/-. However, despite continuous requests, the accused failed to pay for the remaining phones, leading to the present complaint. However, the matter is amicably settled between the parties and in this regard the complainant filed an affidavit on record. 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..

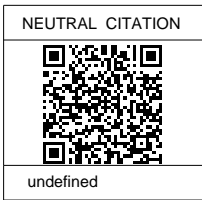
8. In so far as offence under Section 420 of the IPC is concerned, it is appropriate to refer to the decision of the Hon'ble



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.”*

9. 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**



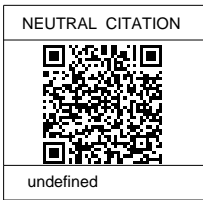
reported in (1992) Supp (1) SCC 335 wherein it has been observed and held as under:

*“(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.”*

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 complaint being **C.R. No.11196030230827 of 2023** registered with **Sayajiganj Police Station, Vadodara** as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside qua the applicant/s herein. Rule is made absolute. Direct service is permitted. If the applicant/s is/are in jail, the jail authority concerned is directed to release the applicant/s forthwith, if not required in connection with any other case.

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**(HASMUKH D. SUTHAR,J)**