



# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 7513 of 2024

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KANJIBHAI SAVJIBHAI ANTALA & ORS.

Versus

STATE OF GUJARAT & ANR.

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### Appearance:

MR HARDIK D MUCHHALA(5634) for the Applicant(s) No. 1,2,3,4  
for the Respondent(s) No. 2

MS SHRUTI PATHAK, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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

**Date : 23/04/2024**

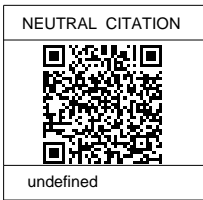
### ORAL ORDER

[1.0] By way of present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC"), the petitioners have sought for the following reliefs:

*"(B) Your Lordships may be pleased to quash and set aside the impugned FIR being I-CR No.67/2012 registered with Dhari Police Station, District Amreli under sections 326, 323, 504, 506(2) and 114 of the Indian Penal Code, 1860 and under Section 135 of the Gujarat Police Act against the petitioners along with Criminal Case No.496 of 2012 pending in the Court of learned Judicial Magistrate, First Class, at Dhari, District Amreli and all further and subsequent proceedings pursuant thereof"*

[2.0] Heard learned advocate for the petitioners and learned APP for respondent No.1 – State of Gujarat.

[3.0] The brief facts giving rise to the present petition are as follows:



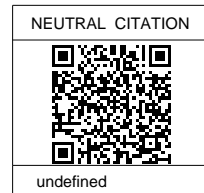
[3.1] That, an FIR being CR No.I-67 of 2012 came to be registered with Dhari Police Station, District Amreli at the instance of respondent No.2 wherein it is alleged that the accused persons hurled abuses to the complainant and accused Nos.1 and 3 inflicted iron pipe blow on the right leg of the complainant and caused fracture injury whereas accused Nos.2 and 4 inflicted random stick blows on the complainant and thus, all the accused caused life threatening injuries to the complainant. It is in these circumstances that the FIR came to be filed for the offences punishable under Sections 326, 323, 504, 506(2) and 114 of the Indian Penal Code, 1860 and under Section 135 of the Gujarat Police Act.

[3.2] After the investigation, charge-sheet came to be filed which culminated into Criminal Case No.496 of 2012, which is pending for adjudication before the learned JMFC, at Dhari, District Amreli.

[3.3] It appears from the record that the trial of Criminal Case No.496 of 2012 is at the stage of final arguments and during the interregnum period settlement is arrived at between the parties.

Hence, present petition on the ground of settlement.

[4.0] At the outset, it is worth to mention that the offence is registered in the year 2012. After filing of the charge-sheet, case culminated into Criminal Case No.496 of 2012 which is pending adjudication in the Court of learned JMFC, at Dhari, District Amreli. Learned Magistrate has framed the charge in the year 2015 and evidence of witnesses have been recorded and trial is at the fag end at the stage of final arguments. In view of the



above, as the offence is non-compoundable one under Section 320 of the CrPC and in view of the law laid down by the Hon'ble Supreme Court in the case of **State of M.P. vs. Najab Khan & Ors.** reported in **AIR 2013 SC 2997**, no case is made out to entertain the present petition.

[4.1] It is worth to mention that the learned Magistrate has recorded the evidence and witnesses have also given their depositions on oath before the learned trial Court and now, it is a matter of appreciation of evidence before the learned trial Court. Whether the witnesses have supported the case of prosecution or not is question of appreciation of evidence. As the matter is at the fag end of trial i.e. at the stage of final arguments, question to exercise powers under Section 482 of the CrPC does not arise as the evidence is already recorded and matter is kept only for delivery of judgment.

[4.2] As the evidence has been recorded and trial is at the fag end, petitioners have approached this Court which is nothing but abuse of process of law and petitioners cannot claim quashing of the impugned proceedings as a matter of right in non-compoundable offence. In this regard reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Narinder Singh & Ors. vs. State of Punjab** reported in **(2014)6 SCC 466**, wherein in paragraph No.29.7 the Hon'ble Supreme Court has held as follows:

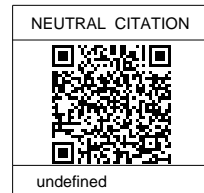
*"29.7 While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High*



*Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”*

[4.3] Further, in the present case, the accused are found to have caused injuries that could have posed threat to the life of complainant and though the matter is compromised, the offence under Section 326 of the IPC being non-compoundable, no case is made out to entertain the present petition even on the ground of settlement, after 12 years of registration of complaint and after the trial is almost over.

[5.0] Even, perusing the injury certificate, though application was filed to frame charge under Section 307 of the IPC by the complainant, considering the injuries sustained by the victim, learned Magistrate has been pleased to consider the injury



certificate and come to conclusion that as the injuries sustained by the victim fall in the category of “grievous hurt” under the purview of section 320 of the IPC, charge came to be framed for the offence under Section 326 of the IPC.

[5.1] Herein, as the evidence is recorded and material witnesses are examined, this Court is not inclined to further examine or appreciate the evidence as the matter is at the fag end so as to avoid any prejudice to the accused persons. Nonetheless, under Section 482 of the CrPC, Court should not hold a mini trial and should not go into evidence or statements recorded by the police during investigation. In this regard, reference is required to be made to the decision of the Hon’ble Apex Court in the case of **Manik B. vs. Kadapala Sreyes Reddy & Ors.** reported in **2023 Live Law 642 (3 Judges Bench)** wherein it is held that High Court should not elaborately discuss the statement of the witnesses recorded under Section 161 of the Cr.P.C. and whether statements are trustworthy or not is required to be decided while witness stands in the witness box at the stage of such trial and such exercise is not permissible while exercising jurisdiction under Section 482 as to entertain such proceedings is nothing but abuse of process of law.

[5.2] It is also appropriate to refer to the decision of the Hon’ble Supreme Court in the case of **Central Bureau of Investigation Vs. Aryan Singh etc.** reported in **2023 SCC Online SC 379 (Para 10)**, wherein it is held that scope under Section 482 of the CrPC is very limited and High Court cannot conduct a mini trial. The Hon'ble Apex Court in para 10 held as under:-



*“10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not.”*

[6.0] In wake of aforesaid discussion, present petition being devoid of any merit stands dismissed. However, learned trial Court is directed to pronounce the judgment in Criminal Case No.496 of 2012 on its own merits without being influenced by any of the observations made in this order.

It is made clear that this Court has not examined the merits of the case. Present petition is **dismissed** in *limine*.

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

*Ajay*