



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 8684 of 2024

=====
AJABHAI PARMABHAI PATEL
Versus
STATE OF GUJARAT & ANR.
=====

=====
Appearance:

MR JAYANTILAL P SOLANKI(7994) for the Applicant(s) No. 1
for the Respondent(s) No. 2

MR MANAN MAHETA, ADDL. PUBLIC PROSECUTOR for the
Respondent(s) No. 1
=====

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

Date : 06/05/2024

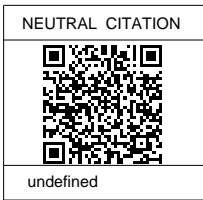
ORAL ORDER

[1.0] Learned advocate Mr. Romesh C. Niven 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.

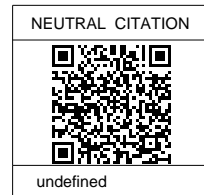
[4.0] By way of this petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"), the



petitioner has prayed to quash and set aside the FIR being **CR No.11195017240172 of 2024 registered with Diyodar Police Station, District Banaskantha** for the offences punishable under Sections 406 and 420 of the Indian Penal Code, 1860 and to quash all other consequential proceedings arising therefrom.

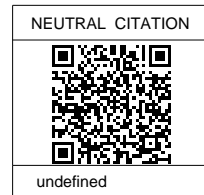
[5.0] Learned advocates for the respective parties submitted that during the pendency of proceedings, the parties have settled the dispute amicably and pursuant to such mutual settlement, the original complainant has also filed an Affidavit dated 06.04.2024 which is produced with the petition at Annexure-B. 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 impugned FIR which is filed at the instance of respondent No.2, it is alleged that the petitioner herein had borrowed a sum of Rs.5,70,000/- and assured to return the same within three years and in this regard also executed a notarized document wherein it was mentioned by the petitioner that if he fails to repay the amount within stipulated time, then he will sell-off the land of the joint ownership of family and repay the complainant. But, as the petitioner – accused did not repay the amount of hand loan, the complainant filed the impugned FIR for the offence of criminal breach of trust and cheating.



[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; (v) Narinder Singh & Ors. Vs. State of Punjab & Anr.** reported in **2014 (2) Crime 67 (SC)** and **vi) and State of Haryana vs. Bhajan Lal** reported in **(1992) Supp (1) SCC 335** as also considering the fact that during investigation, settlement has been arrived at between the parties and the petitioner – accused has paid the amount in question to the complainant for which the complainant has filed an affidavit dated 06.04.2024 and affirmed the fact of settlement and therefore, now as the dispute is amicably settled, 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 petitioner in relation to the impugned FIR would cause unnecessary harassment to the petitioner. 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..

[8.1] 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.”

[8.2] It is also appropriate to refer to the decision of the Hon'ble Supreme Court in the case of **Bhajan Lal (Supra)** 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;"

[9.0] In the result, petition is allowed. The impugned FIR being **CR No.11195017240172 of 2024 registered with Diyodar Police Station, District Banaskantha** as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside *qua* the petitioner herein. If the petitioner is in jail, the jail authority concerned is directed to release the petitioner 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.)

Ajay