

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 8987 of 2024**

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SHAMMI KUNDANLAL OBERAI
Versus
STATE OF GUJARAT & ANR.

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Appearance:

K T BELADIYA(9101) for the Applicant(s) No. 1
MR JANAK PARMAR for the Respondent(s) No. 2
MS DIVYANGNA JHALA, ADDL PUBLIC PROSECUTOR for the
Respondent(s) No. 1

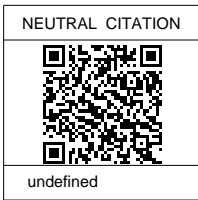
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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 09/05/2024****ORAL ORDER**

[1.0] Learned advocate Mr. Janak Parmar 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.

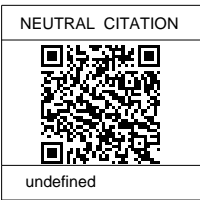
[3.0] Considering the facts and circumstances of the case and since it is jointly stated at the Bar by learned advocates on both the sides that the dispute between the parties has been resolved amicably, this matter is taken up for final disposal forthwith.



[4.0] By way of this petition under Articles 14, 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 petitioner have prayed to quash and set aside the FIR being **CR No.11210055240408 of 2024 registered with Salabatpura Police Station, Surat** for the offences punishable under Sections 420 of the Indian Penal Code, 1860 and to quash all other consequential proceedings arising therefrom.

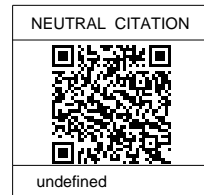
[5.0] Learned advocates for the respective parties submitted that during the pendency of proceedings, the parties have settled the dispute amicably and pursuant to such mutual settlement, the original complainant has also filed an Affidavit dated 21.04.2024 which is produced with the petition at Annexure-B. 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 record it appears that the impugned FIR is filed at the instance of respondent No.2 wherein it is alleged that the complainant was engaged in the business in textile cloth market and accused had purchased the goods on credit. However, he did not pay the said amount of credit of the goods and thereby committed an offence of cheating. It is



alleged that accused purchased the goods amounting to Rs.20,26,978/- and repay only 6,28,664/- and for remaining amount of Rs.13,98,304/- he did not repay and thereby complaint came to be filed.

[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**.

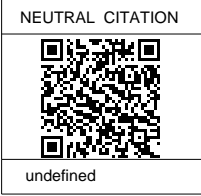


[8.0] Having heard learned advocates on both the sides and considering the facts and circumstances of the case as also the principle laid down by the Apex Court in the cases of (i) **Gian Singh Vs. State of Punjab & Anr.**, reported in (2012) 10 SCC 303, (ii) **Madan Mohan Abbot Vs. State of Punjab**, 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 settlement is arrived at between the parties and even, the complainant has affirmed the fact of his filing the affidavit of settlement and the fact that dispute is private in nature and petitioner has repaid the remaining amount of Rs.13,98,394/- by way of Demand Draft, 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..



[9.0] 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.”

[10.0] In the result, petition is allowed. The impugned FIR being **CR No.11210055240408 of 2024 registered with Salabatpura Police Station, Surat** 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.

DRASHTI K. SHUKLA

(HASMUKH D. SUTHAR,J)