2021 INSC 430

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 884 of 2021
Arising out of SLP (Crl) No.4617 of 2021

Salimbhai Hamidbhai Memon …Petitioner

Versus

Niteshkumar Maganbhai Patel & Anr. …Respondents

O R D E R

Dr Dhananjaya Y Chandrachud, J

1. This appeal arises from a judgment dated 31 March 2021 of a Single Judge of the High Court of Gujarat.

2. On 10 October 2010, the appellant and the first respondent entered into a deed of partnership under which a firm by the name of Calla Associates was constituted. The share of the first respondent in the profit / loss is alleged to be 55 per cent while the share of the appellant, 45 per cent. On 21 June 2017, a document

styled as ‘’sammati-lekh’’ was allegedly entered into by the appellant consenting to the execution of a sale deed in favour of a third party and the appellant agreed not to make any claim in the amount of Rs 3.89 crores from his capital investment.

3. On 23 August 2017, an addendum to the “sammati-lekh” is alleged to have been executed in terms of which certain amounts were to be adjusted and an amount of Rs 5.03 crores was to be paid by the first respondent to the appellant. It has been alleged that under the terms of the addendum, a sale deed of certain land situated at Mouje Samiyala was to be executed in favour of the appellant.

4. It has been alleged that on 4 September 2017, a document was prepared and notarised on 8 September 2017 pertaining to record the relinquishment of rights by the appellant from a parcel of land belonging to the firm. The allegation of the appellant is that under the terms of the original document, the appellant agreed to relinquish rights only in certain land situated at Akota, Vadodara. However, it is alleged that the first respondent forged the internal pages of the document and added additional survey numbers of land, over and above what was agreed to be relinquished.

5. On 1 November 2017, an advocate’s notice was issued by the appellant to the first respondent which was followed by a public notice on 2 January 2018 alleging misappropriation of the amount invested by the appellant. In a reply dated 5 January 2018, the respondent suggested that partnership had been mutually dissolved and documents had been executed to that effect.

6. On 25 January 2018, a legal notice was issued by the appellant complaining of the dishonour of a cheque of Rs 1.47 crores and on 7 January 2018, of another cheque in the amount of Rs 81.31 lacs.

7. On 31 January 2018, the appellant addressed a communication to the bankers to cease all transactions in the account of the partnership firm due to disputes between the parties.

8. On 22 February 2018, the appellant received a communication from HDFC Bank recording that the bank had received a document allegedly executed on 8 September 2017 by which the appellant had relinquished all his rights in the firm in favour of the first respondent. The appellant alleges that it was then that he came to know that the first respondent has fabricated the deed of dissolution of partnership dated 10 February 2018. This forged deed allegedly contained a reference to another forged document dated 8 September 2017. According to the appellant, his signature on the deed of dissolution of partnership is forged and another copy of the document without his signature was notarised on 23 February 2018.

9. On 25 February 2018, the investigating officer at JP Road Police Station conducted a preliminary enquiry into a complaint lodged by the appellant, which is stated to have been disposed of on the ground that the first respondent was ready to settle the accounts in the presence of a mediator and that the allegations were of a civil nature.

10. On 12 March 2018, a settlement was arrived at between the appellant and the first respondent in terms of which it was agreed that the partnership be dissolved and a sum of Rs 26.03 crores be paid to the appellant. Post-dated cheques were issued to the appellant. One of Rs 50 lacs was honoured while the remaining cheques were dishonoured, leading to the initiation of proceedings under the Negotiable Instruments Act 1881.

11. On 20 June 2018, the appellant instituted a complaint before the Gotri Police Station against the first respondent making allegations of forgery and cheating.

12. On 24 December 2018, a fresh MoU was entered between the appellant and the first respondent which acknowledged that an amount of Rs 50 lacs was paid, while a balance of Rs 25.52 crores remained due. The terms of the MoU envisaged that certain lands would be transferred to the appellant in lieu of the outstanding amount. The appellant has alleged that fresh cheques issued to him also returned unpaid on 6 March 2020 and the sale deeds which were executed by the first respondent were in respect of lands whose title was not marketable. The complaint filed by the appellant was disposed of by the Gotri Police Station on 25 August 2019 in view of the settlement dated 24 December 2018 on the ground that despite repeated requests, the appellant had not come forth to record his statement and it appeared that the matter involved monetary transactions for which the appellant would have to seek redressal before the appropriate court.

13. On 9 July 2020, the first respondent got an FIR registered before the Vadodara City Police Station alleging an act of forgery on the part of the appellant. On 9 October 2020, the investigating officer filed a 'B' summary report recording that the alleged document dated 8 September 2017 had not been forged by the appellant but by the first respondent.

14. On 6 December 2020, the FIR which forms the basis of the present proceedings was registered, alleging the commission of offences punishable under Sections 405, 420, 465, 467, 468 and 471 of the Penal Code. The gravamen of the allegations in the FIR is that:

a. The deed of relinquishment which was prepared in relation to certain lands situated at Akota had been interpolated and forged by the first respondent;
b. The deed of dissolution of partnership has been fabricated; and
c. Despite the settlement dated 24 December 2018, the amount due to the appellant had not been paid and the title to the lands which were purported to be transferred in favour of the appellant is in dispute.

15. The first respondent instituted proceedings under Section 482 of the Code of Criminal Procedure 1973 (**"CrPC"**) for quashing the FIR, being Criminal Misc. Application No 19358 of 2020.

16. On 23 December 2020, when the proceedings were initially moved before the High Court, an order was passed by the Single Judge recording that :

> " The matter is between the partners and there appears allegation that some of the partners have taken advantage

> and siphoned away amount as well as also made falsification of documents. “

Counsel appearing on behalf of the first respondent urged that he was willing to offer a settlement. Since Counsel for the parties sought time to explore the possibility of a settlement, the proceedings were adjourned to 10 February 2021. On 8 March 2021, the first respondent was arrested. When the proceedings were taken up by the Single Judge on 9 March 2021, the Court recorded the submission of the first respondent that on 23 December 2020, an oral direction had been issued by the Court restraining the arrest of the first respondent. Recording that this statement was not disputed on behalf of the appellant, the Single Judge directed that the first respondent should forthwith be released by the Vadodara Police Station if he was arrested in connection with the FIR which was the subject matter of the petition for quashing. The proceedings were adjourned to 15 March 2021. On 15 March 2021, the proceedings were adjourned to 22 March 2021 with a direction that no steps should be taken against the first respondent till 23 March 2021. Eventually, on 31 March 2021, the Single Judge recorded that:

> “5. … prima facie it appears that the complaints are with respect to business transactions between both the parties. It further appears that there are some dues which are payable by the present applicant and FIR came to be filed against applicant. On 6.12.2020 by the respondent No.2 which is subject matter of present petition. It is alleged that the documents dated 8.9.2017 and 10.2.2018 are forged documents. There was one complaint filed by the present application against respondent No.2 on 9.7.2020 wherein B Summary report was filed which is at pages 38 to 57. The said report has culminated in a proceedings before the learned Magistrate Court, Vadodara. Those proceedings are also pending.”

The Single Judge noted that previously the appellant had filed a similar complaint which was disposed of by the investigating officer and it was then that a new settlement was arrived at which, formed the basis of the FIR in question. After extracting the earlier orders dated 23 December 2020 and 9 March 2021, the Single Judge issued the following directions in paragraph 9 of the impugned order:

> "9. At this juncture when the proceedings are clearly pending between the parties and both of them have set the criminal machinery in action, to strike a balance between both the parties the investigation is required to be proceeded, however the present applicant be not arrested till next date of hearing,
>
> S.O. to 28.4.2021."

17. This order has given rise to the appeal before this Court.

18. We have heard Mr Anshin H Desai, Senior Counsel appearing on behalf of the appellant, Mr Manoj Swarup, Senior Counsel for the first respondent and Mr Kanu Agrawal, Counsel for the State of Gujarat.

19. Mr Desai, Senior Counsel appearing on behalf of the appellant submits that:

(i) An FIR was lodged on 6 December 2020 containing serious allegations involving:

a. Interpolation of the deed of relinquishment executed by the appellant with the consequence that whereas the interest in only one property at Akota was relinquished, several additional properties have been included and the nature of the interpolation would be obvious on a bare perusal of the documents which have been annexed to the paper book;

and

b. The deed of dissolution of partnership is purported to have been executed on a day when the appellant was not present in India but was traveling to Dubai;

(ii) The FIR has been registered on the basis of the above allegations implicating the commission of offences punishable under Sections 405, 420, 465, 467, 468 and 471 of the Penal Code;

(iii) On the representation made by the first respondent, successive Memorandum of Understandings ("**MoU**" or "**MoUs**") were entered into between the appellant and the first respondent; and

(iv) Pursuant to the settlement, the cheques which were issued by the first respondent have been dishonoured and the title to the lands which were purported to be transferred to the appellant is under a cloud and is not marketable.

In this backdrop, it was urged that in view of the consistent position in law laid down by this Court, the High Court was not justified in issuing a direction restraining the arrest of the first respondent till the next date of listing without reasons .

20. On the other hand, Mr Manoj Swarup, learned Senior Counsel appearing on behalf of the first respondent submitted that:

(i) In terms of the MoU several parcels of land have been transferred to the appellant, details of which have been tabulated as followed in the Counter Affidavit:

RS no.	Area/ Sq Feet	Price per square feet	Consideration	Sale deed date
394	204731	241	04,93,40,071	31.05.2019
395	121966	241	02, 93, 93, 806	30.07.2019
387	95,000	241	02, 28,95,000	30.07.2019

387 (Urban Development Road Area)	59600.27	199.7399	01,19,04,550/-	30.07.2019
399	144840	241	03, 49, 06, 440	16.03.2019
397	114345	241	02,75, 57, 145	11.03.2019
308	45611	241	01, 09, 92, 251	03.11.2019
Total Six parcel of			18,69,89,263/-	
RS No.	Area/ Sq Feet	Price per square feet	consideration	Final plot details
383/384	177000	241	04, 26, 57, 000	
383/384	82183	199. 73	01, 64, 15, 250	

(ii) These parcels of land have been transferred to the appellant in terms of the MoUs executed on 12 March 2018 and 24 December 2018 in addition to which a payment of Rs 50 lacs has been made by cheque. As a result, out of the agreed payment of Rs 26.02 crores to be made to the appellant,

25.52 crores have been paid or value has been received;

(iii) The appellant has received the benefit of the settlements which have been arrived at between the parties and lands have been transferred to him;

(iv) On the earlier complaint lodged by the appellant, a 'B' summary was filed by the Gotri Police Station recording that the appellant had not come forth to record his statement and the transaction between the parties appeared to be of a monetary nature;

(v) By August 2019, these parcels of land were transferred to the appellant in pursuance of the settlements dated 12 March 2018 and 24 December 2018; and

(vi) The order of the High Court dated 31 March 2021 continued to remain in operation due to the general orders operating during the second wave of the pandemic.

21. Mr Kanu Agrawal, learned Counsel appearing on behalf of the State of Gujarat has submitted that the impugned order of the High Court refers to the submission of the police report by the APP which was taken on the record and that the police report has adverted to the forgery of two valuable documents namely, the deeds of relinquishment and dissolution of partnership.

22. After the High Court was moved in proceedings under Section 482 of the CrPC for quashing the FIR, an order was initially passed on 23 December 2020, recording the statement of Counsel for the first respondent that he was ready and willing to offer a settlement. Since Counsel for the parties desired to explore the

possibility of a settlement, the proceedings were adjourned to 10 February 2021. The text of the order of the High Court did not contain any direction restraining the arrest of the first respondent. But it appears from the subsequent order dated 9 March 2021 that an **oral** direction was issued by the Single Judge not to arrest the first respondent. In its order dated 9 March 2021, the High Court adverted to the submission of Counsel for the first respondent that such a direction was previously issued, which was not disputed by the appellant. Since the first respondent was arrested on 8 March 2021, he was directed to be released forthwith.

23. The procedure followed by the High Court of issuing an ***oral*** direction restraining the arrest of the first respondent was irregular. If after hearing the parties on 23 December 2020, the High Court was of the view that an opportunity should be granted to Counsel for the appellant and the first respondent to explore the possibility of a settlement and, on that ground, an interim protection against arrest ought to be granted, a specific judicial order to that effect was necessary. Oral observations in court are in the course of a judicial discourse. The text of a written order is what is binding and enforceable. Issuing oral directions (presumably to the APP) restraining arrest, does not form a part of the judicial record and must be eschewed. Absent a judicial order, the investigating officer would have no official record emanating from the High Court on the basis of which a stay of arrest is enforced. The administration of criminal justice is not a private matter between the complainant and the accused but implicates wider interests of the State in preserving law and order as well as a societal interest in the sanctity of the criminal

justice administration. Though in a different context, the principle was set down by this Court in **Zahira Habibulla H. Sheikh** v **State of Gujarat**[1] :

> "35. This Court has often emphasized that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society are not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice — often referred to as the duty to vindicate and uphold the "majesty of the law"….."

24. Oral directions of this nature by the High Court are liable to cause serious misgivings. Such a procedure is open to grave abuse. Most High Courts deal with high volumes of cases. Judicial assessments change with the roster. Absent a written record of what has transpired in the course of a judicial proceeding, it would set a dangerous precedent if the parties and the investigating officer were expected to rely on unrecorded oral observations.

25. We are conscious of the fact that in civil proceedings, Counsel appearing on behalf of the contesting parties do in certain cases mutually agree before the court to an *ad interim* arrangement and agree among themselves to record the terms of the arrangement by an exchange of correspondence between the advocates. This can typically happen when civil disputants are attempting an amicable settlement. Civil cases involve disputes between two private contestants. In criminal

[1] (2004) 4 SCC 158

proceedings, apart from the accused and the complainant, there is a vital interest of the State and of society in the prosecution of crime. The procedure which was followed by the Single Judge must therefore be eschewed in the future. Judges speak through their judgments and orders. The written text is capable of being assailed. The element of judicial accountability is lost where oral regimes prevail. This would set a dangerous precedent and is unacceptable. Judges, as much as public officials over whose conduct they preside, are accountable for their actions.

26. The Single Judge, by the impugned order dated 31 March 2021 issued an *ad interim* protection against arrest till the next date of listing. The only reasons which are to be found in the order of the Court are that:

(i) Proceedings are pending between the parties; and

(ii) Both of them have set the criminal machinery in action.

27. Having recorded this, the Single Judge has granted a stay of arrest "to strike" a balance between both the parties while observing that the investigation may proceed. How this would strike a balance between both the parties is unclear from the reasons which have been adduced. The FIR contains grave allegations involving:

(i) The interpolation of a deed of relinquishment so as to cover a significantly larger number of properties than the sole property which was agreed to be relinquished; and

(ii) The fabrication of a deed of dissolution of partnership.

28. The offences which are alleged to be involved are punishable under the provisions of Sections 405, 420, 465, 467, 468 and 471 of the Penal Code. These offences are of a serious nature. The APP had evidently apprised the Single Judge of the police report dated 31 March 2020, to which a reference has been made by the Counsel of the State of Gujarat, as noted earlier. While an order granting a stay of arrest in a proceeding under Section 482 of the CrPC lies within the jurisdiction of the High Court, the grant of such relief must be after a judicious application of mind, which must emerge from the reasons which are recorded by the Judge. The formulation of reasons in a judicial order provides the backbone of public confidence in the sanctity of the judicial process. While directing that the proceedings are to be listed on a future date, the High Court is undoubtedly not expected to deliver a detailed judgment elaborating upon reasons why a stay of arrest has been granted. But the reasons recorded by the Court must reflect an application of mind to relevant facts and circumstances, including:

(i) The nature and gravity of the allegations;

(ii) The seriousness of the alleged offence(s);

(iii) The position of the accused and the likelihood of their availability for investigation; and

(iv) The basis on which a stay of arrest has been granted till the next date.

29. The High Court has not alluded to the allegations made in the FIR. This constitutes a serious deficiency. The petition before the High Court is for quashing the FIR under section 482. While determining whether to grant ad-interim relief in

such a case, involving a stay of arrest, the High Court must bear in mind the parameters for the exercise of the jurisdiction for quashing, which has been invoked. The interim order of a stay of arrest is in aid of the final relief which is sought in the petition. Hence, the considerations germane to the exercise of the jurisdiction to quash an FIR must be present to the mind while deciding whether an interim stay of arrest is warranted. What is present to the mind must emerge from the text of the order. In the recent judgment in **Neeharika Infrastructure Pvt Ltd.** v. **State of Maharashtra**[2], this Court through one of us (Justice MR Shah) formulated the principles which have to be borne in mind by the High Court, when its intervention is sought under Section 482 of the CrPC to quash an FIR. After setting out the principles, the Court observed:

> "59. Before passing an interim order of staying further investigation pending the quashing petition under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, the High Court has to apply the very parameters which are required to be considered while quashing the proceedings in exercise of powers under Section 482 Cr.P.C. in exercise of its inherent jurisdiction, referred to hereinabove."

30. Expressing a caution, which requires the High Courts to be circumspect in interfering with investigation, the Court noted:

> "60. In a given case, there may be allegations of abuse of process of law by converting a civil dispute into a criminal dispute, only with a view to pressurize the accused. Similarly, in a given case the complaint itself on the face of it can be said to be barred by law. The allegations in the FIR/complaint may not at all disclose the commission of a cognizable offence. In such cases and in exceptional cases with circumspection, the High Court may stay the further investigation. However, at the same time, there may be genuine complaints/FIRs and the police/investigating agency

[2] 2021 SCC OnLine SC 315

> has a statutory obligation/right/duty to enquire into the cognizable offences. Therefore, a balance has to be struck between the rights of the genuine complainants and the FIRs disclosing commission of a cognizable offence and the statutory obligation/duty of the investigating agency to investigate into the cognizable offences on the one hand and those innocent persons against whom the criminal proceedings are initiated which may be in a given case abuse of process of law and the process. However, if the facts are hazy and the investigation has just begun, the High Court would be circumspect in exercising such powers and the High Court must permit the investigating agency to proceed further with the investigation in exercise of its statutory duty under the provisions of the Code. Even in such a case the High Court has to give/assign brief reasons why at this stage the further investigation is required to be stayed. The High Court must appreciate that speedy investigation is the requirement in the criminal administration of justice."

This Court observed that while there may be some cases where the initiation of the criminal proceedings may be an abuse of law, it is in cases of an exceptional nature, where it is found that absence of interference would result in a miscarriage of justice, that the Court may exercise its jurisdiction under Section 482 of the CrPC and Article 226 of the Constitution. This Court has disapproved of interim orders of High Courts which grant stay of arrest or which direct that no coercive steps must be taken against the accused, without assigning reasons. The impugned order of the High Court cannot be sustained on the touchstone of the principles which have been consistently laid down by this Court and reiterated in the above decision.

31. In **Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur** v. **State of Gujarat**[3], this Court formulated the governing principles to guide the exercise of powers under Section 482 of the CrPC. Speaking for the three judge Bench, one of

[3] (2017) 9 SCC 641

us (Dr DY Chandrachud) observed:

> "(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognise and preserves powers which inhere in the High Court.
>
> (2) The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not het same as the invocation of the jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 CrPC. The power to quash under Section 482 is attracted even if the offence is non-compoundable.
>
> (3) In forming an opinion whether a criminal proceeding or complain should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.
>
> (4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.
>
> (5) The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.
>
> (6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and deceit cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.
>
> (7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

> (8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.
>
> (9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and
>
> (10) There is yet an exception to the principle set out in Propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

32. We are conscious of the fact that in the present case the petition for quashing is still pending before the High Court. At the same time, the High Court was moved for the grant of *ad interim* relief in a petition for quashing the FIR. The considerations which ought to weigh in whether or not to exercise the jurisdiction to quash must be present in the mind of the Judge while determining whether an interim order should be made. That these considerations have been borne in mind can only be evident from the reasons, however brief, which have been indicated in the order of the High Court. This does not emerge from the impugned order of the High Court.

33. We accordingly allow the appeal and set aside the impugned order of the High Court dated 31 March 2021. The High Court, it is clarified would be at liberty to proceed to deal with the petition under Section 482 of the CrPC which is pending consideration. The appeal is disposed of in the above terms.

34. Pending application(s), if any, stand disposed of.

……..…..…..……..…….....J.
[Dr Dhananjaya Y Chandrachud]

…..…..…..…..……..…….....J.
[MR Shah]

New Delhi;
August 31, 2021.