IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 15169 of 2020

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DASRATHJI RANCHHODJI THAKOR
Versus
STATE OF GUJARAT

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Appearance:
MR MAHESH K POOJARA(5879) for the Applicant(s) No. 1,2,3
MR CHINTAN S POPAT(5004) for the Respondent(s) No. 2
MS MOXA THAKKER APP (2) for the Respondent(s) No. 1

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CORAM: **HONOURABLE DR. JUSTICE A. P. THAKER**

Date : 26/10/2020

ORAL ORDER

[1] Heard Mr.Poojara, learned advocate for the applicants, Ms.Thakker, learned APP for the respondent – State and Mr.Popat, learned advocate for respondent No.2 – complainant.

[2] Considering the short dispute involved as also the settlement between the parties, the matter is taken up for final hearing today.

[3] An F.I.R. came to be registered at C.R.No.-11216025200029 of 2020 with Santej Police Station, Gandhinagar for the offences under Sections 406, 420, 465, 467, 468, 471, 120B and 114 etc. of the Indian Penal Code.

[4] Learned advocate for the applicants and learned advocate for the original complainant have submitted that the settlement has been arrived at between the parties.

[5] The present complainant – Karshanbhai s/o. Bhulabhai Ganeshdas Patel is present through video conferencing and on inquiry from him, he has stated that he has filed the complaint against the present applicants and now, the settlement has been arrived at between the parties and he has no objection, if the present application is allowed and the FIR filed by him is quashed.

[6] The complainant has categorically stated in the affidavit as under:-

> *"I say and submit that I am the Ori. Complainant in connection with the FIR registered as FIR No.11216025200029 of 2020 before the Santej Police Staition, Gandhinagar for the offence punishable under Sections 406, 420, 465, 467, 468, 471, 120B , 114 of the Indian Penal Code.*
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> *I say and submit that after registration of the above referred complaint. I say and sumit that at present the dispute between the petitioners and myself came to be amicably resolved and no I have no grudge or grievance against the petitioners and it is decided between us that the alleged transaction will be reversed by the accused and they will not claim any right over the property and therefore now no dispute remain between us and therefore if this Hon'ble Court will quash and set aside the FIR I have no objection I am filing this affidavit on my free will and wish."*

[7] The learned A.P.P. opposed the settlement contending that the offence in question are serious in nature, against the society and are not compoundable.

[8] In the case of Gian Singh V/s. State of Punjab and another reported in (2012)10 SCC 303, the Hon'ble Apex Court, in para

61, laid-down the following proposition of law while distinguishing Section 482 from Section 320 of the Code of Criminal Procedure. The Hon'ble Apex provided the illustrative category of cases suitable for settlement and it was observed that heinous crimes like robbery, dacoity and rape etc. cannot be settled and suitability of the cases for settlement will depend upon the facts of each individual case. It was held that even the cases which are not compoundable under Section 320 of the Code of Criminal Procedure, can be settled under Section 482 of the Code, if the High Court finds the element of settlement. Para 61 reads as under:-

> *"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victims family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while*

working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

[9] Considering the ratio as above, submissions of the learned A.P.P. cannot be countenanced. Mere invocation of the provisions for serious offences would not necessarily lead to inference of commission of such offences. It is noticed that in the complaint, half-hearted allegation against the applicants is made and further, when respondent No.2 – complainant has made intention of not supporting the prosecution case, clear by filing an affidavit, chances of prosecution succeeding against the applicants are very bleak. Only achievement in such a trial

would be wastage of public time, money and energy. Under the circumstances, it is deemed appropriate to acknowledge the settlement placed on record by way of affidavit by respondent No.2 – complainant. Considering the fact that the dispute is resolved between the parties and affidavit is accepted and the FIR is liable to be quashed.

[10] Accordingly, the settlement is acknowledged and the complaint being C.R.No.- 11216025200029 of 2020 with Santej Police Station, Gandhinagar for the offences under Sections 406, 420, 465, 467, 468, 471, 120B and 114 etc. of the Indian Penal Code and all connected proceedings arising therefrom, qua the present applicants, are quashed. Rule is made absolute with no order as to costs. Direct service is permitted through fax, email and/or any other suitable electronic mode.

(DR. A. P. THAKER, J)

VR PANCHAL / cmk