IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 18816 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

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ARJUNSINH UDAYSINH ZALA
Versus
STATE OF GUJARAT

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Appearance:
MR TUSHAR CHAUDHARY(5316) for the Applicant(s) No. 1,10,11,2,3,4,5,6,7,8,9
for the Respondent(s) No. 2
MR LB DABHI, APP (2) for the Respondent(s) No. 1

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CORAM: **HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

Date : 11/12/2020

ORAL JUDGMENT

1. The applicants have filed this application seeking to invoke inherent powers under section 482 of the Criminal Procedure Code, 1973 (Code) for quashing of the FIR being C. R. No. 11195009200557 of 2020, registered with the Chhapi Police Station, Dist. Banaskantha for the offence punishable under

sections 143, 147, 148, 149, 323, 324, 336, 427, 429, 447 and 506(2) of the Indian Penal Code, 1860 (IPC).

2. Learned advocate Mr. Vinaysinh Vaghela has instructions to appear on behalf of the original complainant – respondent No. 2. Registry to accept his vakalatnama and place on record.

2.1 Heard, learned advocate Mr. Dipen Chaudhary for learned advocate Mr. Tushar Chaudhary for the applicants, learned advocate Mr. Vinaysinh Vaghela for the respondent No. 2 – original complainant and learned APP Mr. L. B. Dabhi for the respondent – State through video conference.

3. **Rule**. Learned advocates for the respective respondents waive service. With the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

4. The learned advocate for the applicants has submitted that amicable settlement is arrived at between the original complainant and the applicants and an affidavit to that effect, is also placed on record. Therefore, it is submitted that the discretion may be exercised by this Court and the application may be allowed and the FIR.

5. In support, the learned advocate for the applicants has placed reliance upon four different pronouncements of Hon'ble Apex Court vis-a-vis of this Court i.e. (i) of Hon'ble Apex Court in case of **Narender Singh & Others vs. State of Punjab and Another** reported in (2014) 6 SCC 466, (ii) **Iqbal Dawood Hala Vs. State of Gujarat,** reported in 2013 (0) AIJEL-HC 229756, (iii) a judgment in case of **Janki Chintan Shah Vs. State of Gujarat,** reported in 2014 (0) AIJEL-HC 231973 and (iv) **Arun**

Singh And Others vs. State of Uttar Pradesh Through Its Secretary And Another, reported in (2020) 3 Supreme Court Cases 736.

6. The learned advocate for the respondent No. 2 has placed on record an affidavit duly sworn by the respondent No. 2 - original complainant dated 21.10.2020, who is present before the Court through video conference and admits the contents of the affidavit, relevant of which reads thus:

> *"I, Bhikhabhai Haribhai Chaudhary (Gudol), Aged: 45 years, resident of vi: Kotadi, Ta; Vadgam, Di: Banaskantha do hereby state on solemn affirmation as under:*
>
> *1. xxx*
>
> *2. I say and submit that I have lodged the aforesaid FIR against present applicants and I and applicants are resident of same village and known to each other and now due to intervention of the elderly people of the village as well as friends from the both the sides, amicable settlement has been carried out between parties and therefore, I have no objection if the afore said FIR against present applicants may be quashed and set aside by this Hon'ble Court.*
>
> *3. I therefore, say and submit that now amicable settlement arrived between parties and therefore, there is no grievance remained between us and therefore, if the FIR may be quashed by this Hon'ble Court than I have no objection.*
>
> *4. xxx*
>
> *xxx*
>
> *SD/-*
> *DEPONENT"*

7. The learned advocate for the applicants and the learned advocate for the original complainant have jointly submitted that the parties have entered into an amicable settlement by way of

affidavit which is produced on record. Therefore, they have submitted that the application may be allowed and the FIR may be quashed.

8. Per contra, learned APP for the respondent – State has, while opposing the present application, submitted that it may be that parties have arrived at an amicable settlement, however, looking to the nature and gravity of offence, present application may not be entertained and it is urged that the same be rejected. It is further submitted that if, in case, the Court considers the settlement between the parties, then heavy cost may be imposed upon the parties as the government machinery has been put into motion.

9. This Court has considered the submissions advanced by the learned advocates appearing for the respective parties and also referred the decisions cited by the learned advocate for the applicants. The Hon'ble Supreme Court (i) in case of **Narender Singh & Others vs. State of Punjab and Another** reported in (2014) 6 SCC 466 has observed as under:

> *"8. We find that there are cases where the power of the High Court under Section 482 of the Code to quash the proceedings in those offences which are uncompoundable has been recognized. The only difference is that under Section 320(1) of the Code, no permission is required from the Court in those cases which are compoundable though the Court has discretionary powers to refuse to compound the offence. However, compounding under section 320(1) of the Code is permissible only in minor offences or in non-serious offences. Likewise, when the parties reach settlement in respect of the offences enumerated in section 320(2) of the Code, compounding is permissible but it requires the approval of the Court. Insofar as serious offences are concerned, quashing of criminal proceedings upon compromise is within the discretionary powers of the High Court. In such cases, the power is exercised under*

Section 482 of the Code and proceedings are quashed. Contours of theses powers were described by this Court in B.S. Joshi vs. State of Haryana which has been followed and further explained/elaborated in so many cases thereafter, which are taken note of in the discussion that follows hereinafter."

12. Thereafter, the Court summed up the legal position in the following words:

> *"61. The position that emerges from the above discussion can be summarized 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 plentitude with no statutory limitation but it has to be exercised in accord with the guidelines 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 FIR may be exercised where the offender and the 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 victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the 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 flavor stand on a 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, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the 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 or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

The Court in Gian Singh case was categorical that in respect of serious offences or other offences of mental depravity or offence of merely decoity under special statute, like the prevention of Corruption Act or the offences committed by public servant while working in that capacity. The mere settlement between he parties would not be a ground to quash the proceedings by the High Court and inasmuch as settlement of such heinous crime cannot have imprimatur of the Court."

9.1 The Coordinate Bench passed a judgment in case of **Iqbal Dawood Hala Vs. State of Gujarat,** reported in 2013 (0) AIJEL-HC 229756, held as under:

"Code of Criminal Procedure, 1973-S.482-Indian Penal Code, 1860-S.504, 143, 147, 148, 149, 326 – Arms Act, 1959 – S.25(1)(c)- Bombay Police Act, 1951-S.135(1)- quashing of the criminal complaint- dispute between the parties is of private and personal nature – complainant has

admitted that the complainant and original accused i.e. the applicants have voluntarily settled the dispute – complainant – respondent No.2 has also admitted that he does not want to prosecute the complaint further qua the applicants – held no fruitful purpose will not be served in continuing the prosecution of the complaint – fit case for exercising powers u/s. 482 of the Code to prevent abuse of the process of Court – criminal complaint quashed – application allowed."

9.2 The Coordinate Bench passed a judgment in case of **Janki Chintan Shah Vs. State of Gujarat,** reported in 2014 (0) AIJEL-HC 231973, held as under:

"Code of Criminal Procedure, 1973 – S. 482 – Indian Penal Code, 1860 – S. 120B, 307, 326 – Arms Act, 1959 – 25(1)(b), 25(1)(a) – quashing of complaint – applicant was not named as an accused in the complaint but was shown as witness – however later on investigating officer joined him as an accused – compromise and settlement between the parties – both the sides present before the Court – complainant filed an affidavit in support of the applicant/accused and confirmed about the settlement – denial of allegation by the complainant against the applicant – no objection to the complainant if complaint is quashed qua applicant only – case of Narinder Singh (Supra) referred and relied upon – fit case to exercise jurisdiction u/s 482 of the Code – complaint qua applicant quashed – application allowed."

9.3 The Hon'ble Apex Court in case of **Arun Singh And Others vs. State of Uttar Pradesh Through Its Secretary And Another,** reported in (2020) 3 Supreme Court Cases 736, has partly allowed the Criminal Appeal wherein quashing petition was allowed under section 482 of the Code and it was held that when there is abuse of process of law the FIR is required to be quashed.

9.4 The Coordinate Bench passed a judgment in case of **Kalubhai Virabhai Thakor (Mauluna) v. State of Gujarat**,

2019 (0) AIJEL-HC 240101 (Criminal Miscellaneous Application No. 1399 of 2019) has observed as under:

> *"27. At this juncture, we would like also to add that the timing of settlement would also play a crucial role. If the settlement is arrived at immediately after the alleged commission of offence when the matter is still under investigation, the High Court may be somewhat liberal in accepting the settlement and quashing the proceedings/investigation. Of course, it would be after looking into the attendant circumstances as narrated in the previous para. Likewise, when challan is submitted but the charge has not been framed, the High Court may exercise its discretionary jurisdiction. However, at this stage, as mentioned above, since the report of the I.O. under Section 173,Cr.P.C. is also placed before the Court it would become the bounding duty of the Court to go into the said report and the evidence collected, particularly the medical evidence relating to injury etc. Sustained by the victim. This aspect, however, would be examined along with another important consideration, namely, in view of settlement between the parties, whether it would be unfair or contrary to interest of justice to continue with the criminal proceedings and whether possibility of conviction is remote and bleak. If the Court finds the answer to this question in affirmative, then also such a case would be a fit case for the High Court to give its stamp of approval to the compromise arrived at between the parties, inasmuch as in such cases no useful purpose would be served in carrying out the criminal proceedings which in all likelihood would end in acquittal, in any case."*

10. Upon all such authorities, which have been submitted by the learned advocate for the applicants, i.e. (i) in case of Narender Singh & Others vs. State of Punjab and Another (ii) Iqbal Dawood Hala Vs. State of Gujarat and (iii) Janki Chintan Shah Vs. State of Gujarat, are fully applicable to the present case. In addition to that, this Court has also referred to the latest order passed by the Coordinate Bench in case of **Kalubhai Virabhai Thakor (Mauluna) v. State of Gujarat**, 2019 (0) AIJEL-HC 240101 and therefore, this Court is of the view that when the

parties have amicably settled the disputes in such offences, there is no requirement of trial and same would be against the ends of justice. Therefore, FIR is required to be quashed under section 482 of the Code.

11. Having heard the arguments advanced by the learned advocates appearing for the respective parties and the authorities cited by the learned advocate for the applicants, it transpires that the applicants are charged with the offence punishable under sections 143, 147, 148, 149, 323, 324, 336, 427, 429, 447 and 506(2) of the IPC. The offences are not so grave which invite the latest law of the land that whenever there are serious offences, in that case the High Court may not exercise discretion under section 482 of Code but in the present case, the offences are less serious in nature. Further, there is amicable settlement arrived at between the original complainant and the accused person by way of an affidavit, which is on record, and therefore, it would be a futile exercise if the trial takes place and the purpose of the same would not be served and therefore, in the considered view of this Court, it would be just and proper to quash the aforesaid FIR.

12. In view of the aforesaid facts and circumstances and the further development that took place in the matter as come forward by way of an affidavit by the respondent No. 2 - original complainant, learned advocate appearing for the applicants has submitted that now the cause does not survive and therefore, the FIR may be quashed and set aside.

12.1 This Court has referred to the land mark decision of Hon'ble Supreme Court in case of **Parbatbhai Aahir vs. State of Gujarat** reported in 2017 SCC online SC 1189 and in case of

State of Madhyapradesh vs. Laxmi Narayan and Others reported in (2019) 5 SCC 688. Normally, this Court would not entertain the quashing petition in serious offences like offences under sections 376 and 302 of the IPC. But, in the present case offences which are registered upon the applicants are less serious in nature, as discussed earlier. Therefore, the latest law is not applicable to the present case.

13. Pursuant to FIR, it appears that the dispute is settled and therefore, in view of the fact that the dispute between the applicants and respondent No. 2 – original complainant have been amicably settled, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and thereby peace is restored, securing the ends of justice being the ultimate guiding factor. Moreover, any further continuation of proceedings in this matter would amount to abuse of process of law. Therefore, it would be expedient to quash the subject - FIR.

14. In view of the aforesaid discussion and the submissions made by the learned advocates appearing for the parties, this Court is inclined to exercise discretion vested under section 482 of the Code, in favour of the present applicants. The present application, therefore, succeeds and is accordingly allowed. The FIR being C. R. No. 11195009200557 of 2020, registered with the Chhapi Police Station, Dist. Banaskantha for the offence punishable under sections 143, 147, 148, 149, 323, 324, 336, 427, 429, 447 and 506(2) of the Indian Penal Code, 1860, is hereby quashed and set aside. However, at this juncture, the Court deems it just and proper to direct the applicants as well as the original complainant to deposit Rs.10,000/- **each** (Total Rs.20,000/-) before the High Court Legal Services Committee

towards costs, to be paid within a period of two weeks from today.

14.1 Rule is made absolute accordingly. Direct service is permitted through e-mail / fax / any other electronic mode.

14.2 Copy of this order be sent to the concerned Court and concerned police station through e-mail / fax.

[Dr. Ashokkumar C. Joshi, J.]

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