

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 22996 of 2023**

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FARUKAZAM JALALUDDIN PATHAN & ORS.FARUKAZAM JALALUDDIN
PATHAN

Versus

STATE OF GUJARATSTATE OF GUJARAT & ANR.

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Appearance:

MR AFZALKHAN A PATHAN(11420) for the Applicant(s) No. 1,2,3

for the Respondent(s) No. 2

MS VRUNDA SHAH, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 20/02/2024

ORAL ORDER

[1.0] Registry to accept vakalatnama of learned advocate Mr. M.H. Shaikh, who has instructions to appear for and on behalf of respondent No.2.

[2.0] RULE. Learned APP and learned advocate Mr. M.H. Shaikh waive service of notice of Rule for and on behalf of respective respondents. With the consent of learned advocates for the respective parties, present petition is taken up for final hearing.

[3.0] By way of present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC"), the petitioners are seeking quashing of FIR being I-CR No.44/2014 registered with Bapunagar Police Station, Ahmedabad City in connection with which charge-sheet is filed for the offences punishable under Sections 326, 143, 147, 148, 149, 452, 427, 403, 294(b) and 506(2) of the Indian Penal Code, 1860 (for short "IPC") and

section 135 of the Gujarat Police Act alongwith all the consequential proceedings thereto.

[4.0] At the outset, learned advocate for the petitioners seek permission to withdraw the present petition *qua* petitioner No.1 – FARUKAZAM JALAUDDIN PATHAN and petitioner No.3 – SHAFIKKHAN JILEDAXHAN PATHAN. Permission as sought for is granted. Present petition stands disposed of as withdrawn *qua* petitioner Nos.1 and 3. Hence, present petition is considered only *qua* petitioner No.2 – MOHMED GULSHAD FARUKAZAM PATHAN.

[5.0] 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.

[6.0] 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 19.12.2023 which is produced with the petition at Annexure-B. In the Affidavit, the original complainant has categorically stated that the dispute with the petitioners 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.

[7.0] Going through the record it appears that impugned FIR came to be filed at the instance of respondent No.2 with

Bapunagar Police Station, Ahmedabad City for the offences punishable under Sections 326, 143, 147, 148, 149, 452, 427, 403, 294(b) and 506(2) of the Indian Penal Code, 1860 (for short "IPC") and section 135 of the Gujarat Police Act. After completion of investigation, charge-sheet is filed which culminated into Criminal Case No.1400738/2014 and is pending before the Court of learned Additional Chief Metropolitan Magistrate, Court No.14, Ahmedabad City and charge is yet not framed and trial has not commenced. Further, in connection with the alleged incident, petitioner has also lodged a cross-FIR being I-CR No.45/2014 with Bapunagar Police Station, Ahmedabad City against respondent No.2 herein and others and in the said FIR, petitioners have been cited as witness.

[7.1] It is the case of the petitioners that petitioner No.2 herein at the time of filing of FIR was aged 19 years and thus was a juvenile, who in collusion with other accused, used to eve-tease girls and though attempts were made to convince the accused persons not to eve tease girls, they had continued to stare girls. In this connection, offence took place wherein by forming unlawful assembly in furtherance of common intention, accused persons made assault with deadly weapons on the complainant side. Further, in the alleged offence, petitioner Nos.1 and 3 had assaulted complainant with sword and baseball bat and thus committed offence punishable under Section 326 of the IPC. However, the petition *qua* petitioner Nos.1 and 3 is disposed of as withdrawn. Insofar as petitioner No.2 is concerned, he is

attributed with a role to have administered threat upon the complainant which would fall under section 506(2) of the IPC. Thus, considering the role attributed to petitioner No.2 and the fact that charge is yet not framed and offence is registered in the year 2014 and settlement has been arrived at between the parties, present petition deserves consideration *qua* petitioner No.2.

[8.0] 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**.

[9.0] 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 impugned FIR is filed in connection with altercation that took place between the sides of accused and the complainant pursuant to which one cross FIR being I-CR No.45/2014 is registered with Bapunagar Police Station, Ahmedabad City and the fact that petitioner No.2 is attributed to have administered threat upon the complainant and as now the dispute is amicably settled and there is no chance of breach of public tranquility, in the opinion of this Court, further continuation of criminal proceedings against the present petitioner No.2 in relation to the impugned FIR would cause unnecessary harassment to the petitioner No.2. Further, even the complainant has affirmed the fact of settlement and filing of affidavit by him. 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..

[10.0] In the result, **petition is partly allowed *qua* petitioner No.2 only and stands disposed of *qua* petitioner Nos.1 and 3.** The impugned FIR being **I-CR No.44 of 2014 registered with Bapunagar Police Station, Ahmedabad City** as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside *qua* the petitioner No.2 – **MOHMED GULSHAD FARUKAZAM PATHAN only.** If the petitioner No.2 is in jail, the jail authority concerned is directed to release him 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.)

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