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ABC 2020 (I) 61 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT
(V.P. Patel, J.)
R/Criminal Misc Application No 18777 of 2018
Decided on 27 November, 2019

JAY @ JAYESH MAHADEVBHAI BHARWAD (LABARIYA)- Applicant(s).
Versus
STATE OF GUJARAT - Respondent(s).

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Law Covered:- Code of Criminal Procedure, 1973 – Section 482 – Indian Penal Code, 1860 – Sections 114, 323, 506(2) & 294(b) – Atrocity Act – Sections 3(1) (E),(R),(S) – Gujarat Police Act – Section 135(1) – Quashing on the basis of compromise in case of Atrocity Act – Compromise found genuine – further continuation of the Atrocity Special Case in relation to the impugned FIR against the applicants would be unnecessary harassment to them – continuation of proceedings may further trigger tension & relationship between the parties would get strained – FIR quashed. (Para 13)

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Held:- Considering the submissions advanced by the learned advocates appearing on behalf of both the parties and the affidavit of the respondent no.2 on record, this Court found that the compromise is genuine. This Court has also considered the ratio laid down in the above referred judgments and it appears that further continuation of the Atrocity Special Case in relation to the impugned FIR against the applicants would be unnecessary harassment to them and continuation of proceedings may further trigger tension and relationship between the parties would get strained. Therefore to secure justice, impugned FIR is required to be quashed and set aside exercising the discretion under Section 482 of CRPC. (Para-13)

Counsel:- For Applicant(s): Mr Mahesh K Poojara, Adv.
For Respondent(s): Mr. Kishan H Daiya, Ms. CM Shah, Advs.

Cases Referred:-

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1. Rupabhai Bhalabhai Bharwad Vs. State of Gujarat, 1994(1) GLR 415, (Para-12)
2. Parbatbhai Aahir@Parbatbhai Bhimsinhbha vs. State of Gujarat, 2017(9) SCC 641, (Para-12)

ORDER

V.P. PATEL, J.: - 1. This application is filed by the applicants under Section 482 of Code of Criminal Procedure for quashing and setting

aside the FIR filed against them. They have claimed reliefs under para 13 (b) and (c) as under:

"(b) That this Hon'ble Court may be pleased to allow this present Criminal Misc. Application by quashing and setting aside the FIR filed at Annexure A as CRNo. II-3454/2018 registered before Navrangpura Police Station, Ahmedabad and also be please to quash further proceedings arising out of the same in the interest of justice.

(c) Pending admission, hearing and till final disposal of this petition, this Hon'ble Court may pleased to grant stay as to further proceedings of FIR filed by respondent no.2 as CR No. II 3454/2018 Navranpura Police Station, Ahmedabad in the interest of justice."

2. Learned advocate for the private parties have jointly submitted that the dispute is settled between the applicants and the respondent no.2 and requested to take the matter for final disposal. Considering the request, the matter is taken for final disposal.

3. **RULE.** Learned APP Ms. CM Shah waives service of notice of rule on behalf of respondent-State. Learned advocate Mr. Kishan H Dahiya waives service of notice of rule on behalf of respondent no.2. The respondent no.2- Gopalbhai Pithabhai Mahida is present before the Court.

4. The facts of the case are as under:

4.1] One complaint came to be filed against the petitioners as CR NO.II- 3454/2018 before Navrangpura Police Station for the offence punishable under Sec. 323,294(B),506(2) and Sec. 114 of the IPC and Atrocity Act Sec. 3(1) (E),(R),(S) and Sec. 135(1) of GP Act thereafter at present the dispute is amicably settled between the parties and the complainant does not want to proceed further with his complaint.

5. Learned advocate Mr. Mahesh K Pujara for the applicant has submitted that the applicants and the original complainant have settled the dispute and there is no grievance between the parties. It is further submitted that the charge-sheet is filed by the Investigating Officer before the Special Atrocity Court which is registered as Atrocity Special Case No. 19/2019. It is further submitted that this Court has power to quash and set aside the Atrocity Special Case even after the charge-sheet is filed.

a 6. Learned APP Ms. CM Shah has submitted that the investigation is completed and the charge-sheet is filed before the Special Court of SC, ST (POA) Act and the ingredients are attracted and the offence is of grievous nature and requests to dismiss the application.

b 7. The present complaint is filed by original complainant-respondent no.2, against the applicants- original accused and one juvenile in conflict with law being FIR No. CR NO.II- 3454/2018 before Navrangpura Police Station for the offence punishable under Sec. 323,294(B),506(2) and Sec. 114 of the IPC and Atrocity Act Sec. 3 (1)(E),(R),(S) and Sec. 135(1) of GP Act. It is alleged that the original
c complainant was studying and residing at hostel and from last three months the accused harassed him and abused about his caste and also tortured and threatened. On 20.09.2018 at about 5PM the accused persons called the complainant to meet on a tea stall near Commerce Six Road and the complainant was bitten by accused persons and
d accordingly the FIR came to be lodged.

8. Learned APP places on record the charge-sheet filed against the present applicants-accused persons, the same is taken on record.

e 9. Learned advocate Mr. Kishan Dahiya on behalf of respondent no.2 has submitted that the matter is amicably settled between the original complainant and the applicants. The affidavit of respondent no.2-Gopalbhai Pithabhai Mahida, dated 05.10.2018 is already on record. The respondent no.2 is identified by learned
f advocate Mr. KH Dahiya. The affidavit is shown to respondent no.2-Gopalbhai Pithabhai Mahida and he identifies his signature and stated that the contents of the affidavit are true and correct.

g 10. The Investigating Officer Mr. LB Zala is also present before this Court. He has also identified the respondent no.2-original complainant and verified that contents of the affidavit are voluntary statements given by the complainant without any force or inducement.

11. Upon perusing the affidavit which states as under:

h *"It is submitted that I am the original complainant who has filed the FIR registered as CR NO.II- 3454/2018 before Navrangpura Police Station, Ahmedabad and after registration of the above referred complaint at present the dispute between us is amicably resolved with the help of friends an relatives and the complaint filed by me is because of some misunderstanding and misconception which is already been sorted out between us with the help of friend and relatives and*

therefore now there is no ill will or grievance remain between us an I do not received any injury and all and the dispute is amicably resolved between us and therefore I do not want to continue with my complaint further and therefore I earnestly urge this Hon'ble Court to terminate the proceeding as prayed by petitioner in the interest of justice." a

12. This Court has considered the decisions laid down by this Court in the case of *Rupabhai Bhalabhai Bharwad Vs. State of Gujarat* reported in 1994(1) GLR 415 b

"Incidentally, it may be clarified that while accepting compromise, one additional factor shall have to be clearly borne-in-mind of Atrocities Act which consists of two parts-the first part pertains to the minor offence, while the second one pertains to the major offences where the sentence provided is for ten years or life. Thus, the offence falling within the ambit of the second part being quite serious so far as the life imprisonment is concerned, the Court would it be justified in provided for ten years or less than that, the Court may deepening upon the facts and circumstances of the particular case, grant composition of the offence. It may further be clarified that the inherent powers vested to under Sec 482 of the Code in the High Court are not made available to the Special Court, however, if parties decide composition of the offence and approach it, then the concerned Court on the basis of observations made in the foregoing paragraphs may accept the same, as for the limited purpose of composition, it would not be just to ask the parties to incur expenses and undergo physical hardships to specially come to the High Court." c d e

12.1] This Court has considered the recent decision of the Supreme Court in the case of *Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur vs. State of Gujarat*, reported in 2017(9) SCC 641. In the decision of the Supreme Court, broad principles have been summarized so far as the inherent powers of the High Court under section 482 of the Cr.P.C. Is concerned and the power to quash the first information report on the basis of the settlement. The broad principles laid down by the Supreme Court are as under; f g

"15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(i) Section 482 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 recognises and preserves powers which inhere in the High Court; h

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the

a ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of 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 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

b (iii) In forming an opinion whether a criminal proceeding or complaint 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;

c (iv) 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;

d (v) 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;

e (vi) 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 dacoity 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;

f (vii) 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 in so far as the exercise of the inherent power to quash is concerned;

g (viii) 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;

h (ix) 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

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) 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. "

13. Considering the submissions advanced by the learned advocates appearing on behalf of both the parties and the affidavit of the respondent no.2 on record, this Court found that the compromise is genuine. This Court has also considered the ratio laid down in the above referred judgments and it appears that further continuation of the Atrocity Special Case in relation to the impugned FIR against the applicants would be unnecessary harassment to them and continuation of proceedings may further trigger tension and relationship between the parties would get strained. Therefore to secure justice, impugned FIR is required to be quashed and set aside exercising the discretion under Section 482 of CRPC.

14. In view of the above, the application is allowed and the impugned FIR being CRNO.II 3454/2018 registered before the Navrangpura Police Station, Ahmedabad is hereby quashed and set aside. Consequently, all the other proceedings arising out of the aforesaid FIR are also quashed and set aside qua present applicants. Rule is made absolute to the aforesaid extent. Direct service is permitted.

Result:- FIR quashed.

**ABC 2020 (I) 66 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT**

(S.H.Vora, J.)

Criminal Misc Application No 22073 of 2019

Decided on 29 November, 2019

VISHNUBHAI GOVINDBHAI DANTANI - Applicant(s).

Versus

STATE OF GUJARAT - Respondent(s).

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 482 – Indian Penal Code, 1860 – Sections 363, 366 & 376 –