

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION NO. 637 of 2022**

KAMLESHKUMAR MOHANJI METHANA

Versus

STATE OF GUJARAT

Appearance:

MR HIMANSU M PADHYA(1611) for the Applicant(s) No. 1

MR HITESH K PANDYA(10018) for the Respondent(s) No. 2

MR RC KODEKAR, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE**Date : 18/07/2022****ORAL ORDER**

1. By this application under section 397 of the Code of Criminal Procedure, the applicant has prayed to quash and set aside judgment and order dated 27.06.2022 passed by the learned Sessions Judge, Banaskantha at Palanpur in Criminal Appeal No.12 of 2021 and the judgment and order dated 12.02.2021 passed by the learned 2nd Additional Chief Judicial Magistrate, Palanpur in Criminal Case No.5628 of 2018.
2. In view of the fact that the parties have settled their disputes, learned advocate for respondent no.2- original complainant jointly with learned advocate for the applicant submitted that offence may be permitted to be compounded.
3. It appears from the record that applicant was put to trial in the Court of the learned 2nd

Additional Chief Judicial Magistrate, Palanpur in Criminal Case No.5628 of 2018 for the offences punishable under section 138 of the Negotiable Instrument Act. The Trial Court vide judgment and order dated 12.02.2021 held the applicant herein guilty for the offence punishable under section 138 of the Negotiable Instrument Act.

4. As the applicant came to be convicted by the Trial Court, they preferred Criminal Appeal No.12 of 2021 in the Court of the learned Sessions Judge, Banaskantha at Palanpur. The appeal came to be rejected by the learned Sessions Court vide order dated 27.06.2022 and confirmed the order passed by the learned Trial Court. Being aggrieved with the same, the applicant has come up with this application.
5. The complainant-respondent no.2 has produced on record an affidavit wherein the original complainant confirms about the settlement has been arrived at between the parties as per the settlement dated 29.06.2022. In the said settlement deed, it has been stated that brother of the petitioner Shri Mahendrakumar Mohanbhai Methana has paid an amount of Rs.2,50,000/- and the remaining amount of Rs.2,36,000/- and the expenses incurred shall be paid within 45 days and based on the such settlement arrived at between the parties, it has been stated that the complainant has no objection if petitioner is

enlarged on bail by this Hon'ble Court

6. In case of **Gian Singh vs. State of Punjab and Another** reported in (2012) 10 SCC 303, the Apex court has considered the relative scope of section 482 and section 320 of the Code and has laid down the parameters as to in what kind of cases and facts and circumstances, the High Court can advert to its inherent power under section 482 of the Code to quash criminal proceedings. The Supreme Court examined previous decisions of the Apex Court in cases of **B. S. Joshi vs. State of Haryana** reported in (2003) 4 SCC 675, **Nikhil Merchant vs. CBI** reported in (2008) 9 SCC 677 and **Manoj Sharma vs. State** reported in (2008) 16 SCC 1.
7. In **Gian Singh (supra)**, it is held,

"57. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the

ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment."

"58. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, 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 peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences

have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed."

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 victim's 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 predominately 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."

8. It is pertinent to note that the above issue is squarely covered by a Full Bench decision of the Bombay High Court rendered in case of **Abasaheb**

Yadav Honmane Vs. State of Maharashtra reported in (2008) 2 Mah. L.J. 856, and in a decision of this Court in case of **Ashishbhai Nagindas Navsarivala Vs. State of Gujarat and Anr.**, decided on 16.11.2017 in Criminal Misc. Application No.27481 of 2017 as well as in decisions of the Coordinate Benches of this Court in case of **Rajeshbhai @ Raju Mangubhai Patel Vs. State of Gujarat and Anr.**, decided on 20.11.2017 in Special Criminal Application (Quashing) No.8878 of 2017 and in case of **Bachubhai Mangalbai Chavda Vs. State of Gujarat and Anr.**, decided on 09.01.2013 in Criminal Revision Application No.160 of 2011, the inherent powers under section 482 of the Code of Criminal Procedure or the extraordinary jurisdiction under Article 226 of the Constitution of India include the powers to quash the FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification.

9. In exercise of powers conferred under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, exercise of inherent powers by the High Court would depend upon the facts and circumstances of each case. It is not permissible to have a straight jacket formula. No precise and inflexible guidelines can be provided.

10. The settlement has brought peace in the society and the parties who were once aggrieved, are now contended and are willing to lead harmonious life. In such circumstances, continuance of criminal proceedings will not serve any purpose. On the contrary, it would be harassing and also counteractive to the congenial relationship which is restored between the parties.

11. In view of aforesaid settlement arrived at between the parties, this application succeeds and is hereby allowed. The judgment and order dated 27.06.2022 passed by the learned Sessions Judge, Banaskantha at Palanpur in Criminal Appeal No.12 of 2021 and the judgment and order dated 12.02.2021 passed by the learned 2nd Additional Chief Judicial Magistrate, Palanpur in Criminal Case No.5628 of 2018 are hereby quashed and set aside in view of the settlement dated 29.06.2022 arrived at between the parties. The applicant is ordered to be released forthwith. Bail bond if any shall stand cancelled. Direct service is permitted.

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(SAMIR J. DAVE, J)

BIJOY B. PILLAI