IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 6184 of 2022

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KAMLESH @ RINKU MOHANLAL UPADHYAY

Versus

STATE OF GUJARAT

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Appearance:
MR RUTURAJ NANAVATI(5624) for the Applicant(s) No. 1,2,3
MAITRI P PATEL(8126) for the Respondent(s) No. 2
MR MANAN MAHETA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**

Date : 11/04/2022

ORAL ORDER

1. By way of this application filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ”the Code”), the applicants have prayed for following substantial reliefs:

> “*(A) Your Lordships may be pleased to admit and allow this application;*
>
> *(B) Your Lordships may be pleased to quash and set aside the order and judgment dated 03.03.2022 passed in Criminal Case No.5187 of 2017, by the Honourable 3rd Additional Chief Metropolitan Magistrate, Ahmedabad (Rural) for the offences punishable under Sections 498(a), 323, 294(b), 506(1) and 114 of Indian Penal Code, 1860 read with 3 and 7 of Dowry Prohibition Act, 1961 and all consequential proceedings thereof;”*

2. Necessary facts giving rise to filing of the present application are stated to be as under:

2.1 That, the respondent no.2 on 21.05.2017, has lodged the impugned FIR alleging that on 30.11.2016, she had married to original accused no.1 and after four days of the marriage, all the accused started harassing her for household work and also demanded dowry as alleged in the FIR. That, the accused no.1 had abused and beaten the complainant. That, the complainant on account of frequent quarrel and torture of the accused, had left her matrimonial home. Thus, the aforesaid complaint lodged against all the accused by the complainant. After conclusion of investigation, charge-sheet was filed. Before the trial Court, the prosecution examined the witnesses in support of charges and at the end of trial, the learned trial Court has convicted the applicants no.1 and 2 under Section 498(A) of IPC and sentenced them to suffer simple imprisonment of 2 years and fine of Rs.1000/- each and in default of payment of fine, simple imprisonment of one month was awarded and under Section 323 of IPC, the applicants no.1 and 2 have been sentenced to suffer simple imprisonment of six months and fine of Rs.500/- each and in default of payment of fine, simple imprisonment of one month was awarded and under Section 3 of Dowry Prohibition Act, the applicants no.1 and 2 have been sentenced to suffer simple imprisonment for five years and fine of Rs.1500/- each and in default of payment of fine, simple imprisonment for six months was awarded and under Section 506(1) of the IPC, the applicant no.3 has been sentenced to suffer simple

imprisonment for one year and fine of Rs.500/- and in default of payment of fine, simple imprisonment for one month was awarded.

2.2 Being aggrieved by the conviction and sentence, the applicants preferred appeal before the learned Sessions Court, Ahmedabad which is registered as Criminal Appeal No.10 of 2022 wherein the learned Appellate Court was pleased to suspend the sentence awarded by the learned trial Court pending the appeal.

During the pendency of the appeal, the applicants have filed the present application for quashing of impugned FIR, charge-sheet and order of conviction mainly on the ground that the dispute in question which is purely personal in nature, has been amicably settled between the parties and now, continuation of impugned criminal proceedings amounts to sheer abuse of process of law.

3. In the aforesaid facts, the applicants have prayed for quashing and setting aside the impugned FIR and consequential proceedings arising out of the aforesaid FIR and the order of conviction.

4. Heard Mr. Ruturaj Nanavati, learned advocate for the applicants, Ms. Maitri Patel, learned advocate for the respondent no.2-original complainant and Mr. Manan Maheta, learned APP for the respondent-State.

5. Mr. Nanavati, learned advocate for the applicants would submit that the dispute has been resolved by way of amicable settlement with the involvement of well-wishers of both the sides. He would further submits that the respondent no.2 has agreed to give consent for quashing of impugned criminal proceedings and she does not want to prosecute the impugned criminal proceedings and considering the nature of dispute no public policy is involved in the case. Strong reliance has been placed on the decision in case of ***Ramgopal*** Versus ***State of Madhya Pradesh*** reported in ***2021 (0) AIJEL-SC 67811*** to submit that having regard to the nature of offence and the fact that the parties have amicably settled their dispute and the complainant has willingly consented to the nullification of criminal proceedings, the High Court can quash such proceedings in exercise of its inherent powers under Section 482 of the Code, even if the offences are non-compoundable.

6. Ms. Maitri Patel, learned advocate for the respondent no.2 reiterating the facts of settlement affidavit would submits that the informant-respondent no.2 do not wish to prosecute the applicants as the impugned FIR was lodged out of misunderstanding, misconception, desperation, anger and anxiety.

7. Mr. Manan Maheta, learned APP has vehemently opposed the application mainly on the ground that once

conviction is awarded by the trial Court and when appeal is pending before the Appellate Court, the power cannot be exercised under Section 482 of the Code by this Court.

8. I have heard learned advocates appearing for the respective parties.

9. Before adverting to the issue raised in the application, let examine the scope of powers exercisable by the High Court under Section 482 of the Code. In case of ***Gian Singh*** Vs. ***State of Punjab*** reported in ***2012 10 SCC 303***, 3Judge Bench of the Apex Court held in paragraph-61 as under:

> *"61.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 pre-dominatingly 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."

10. In case of *State of* ***Madhya Pradesh*** Vs. ***Laxmi Narayan & Ors.*** reported in ***2019 5 SCC 688***, it was held that:

"10(1) That the power conferred under Section 482 of the Code to quash the criminal proceedings for the noncompoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;
(2) Such power is not to be exercised in those prosecutions which involved heinous

> *and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;*
> *(3) Similarly, such power is not to be exercised for the offences under the special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;*
> *(4) xxx xxx xxx*
>
> *(5) While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc."*

11. In light of the settled principle of law, it appears that the criminal proceedings involving nonheinous offences or where the offences are predominantly of a private nature, can be annulled irrespective of the fact that trial has already been concluded or appeal stands dismissed against conviction.

12. In the facts of the present case, the dispute is private in nature and parties have voluntarily agreed to settle the dispute and there is no coercion undue force on them for arriving at settlement. The offence alleged cannot be serious in nature for quashing of which would overwrite public interest. Thus, this Court is of the considered view that in view of settlement, no fruitful purpose would be

served by continuing the proceedings and thus, further continuation of proceedings would amount to abuse of process of the Court and therefore, quashing of criminal proceedings will advance peace and harmony between the parties who have decided to forget the dispute. Thus, to secure the ends of justice, the impugned FIR is required to be quashed and set aside in exercise of powers conferred under Section 482 of the Code.

13. Hence, the present application is allowed and the impugned FIR bearing C.R.No.I-53 of 2017 registered with Sabarmati Police Station, Dist.- Ahmedabad filed against present applicants and the judgment and order of conviction dated 03.03.2022 passed in Criminal Case No.5187 of 2017 passed by learned 3rd Additional Chief Metropolitan Magistrate, Ahmedabad (Rural) are hereby quashed and set aside qua the present applicants. Learned Sessions Judge, Ahmedabad (Rural) shall pass appropriate order in the pending criminal appeal being Criminal Appeal No.10 of 2022. Direct service is permitted.

(ILESH J. VORA,J)

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