Parbatbhai Aahir @ Parbatbhai ... vs The State Of Gujarat on 4 October, 2017

Equivalent citations: AIR 2017 SUPREME COURT 4843, 2017 (9) SCC 641, AIR 2017 SC (CRIMINAL) 1554, (2018) 1 GUJ LR 1, 2017 ALLMR(CRI) 4438, (2017) 68 OCR 982, (2018) 1 MADLW(CRI) 504, (2017) 4 CRILR(RAJ) 961, (2018) 102 ALLCRIC 988, (2017) 4 CRIMES 166, 2017 CALCRILR 4 352, (2018) 1 CAL LJ 34, (2017) 4 PAT LJR 207, (2017) 12 SCALE 187, (2018) 125 CUT LT 163, 2017 CRILR(SC MAH GUJ) 961, (2017) 4 BOMCR(CRI) 372, (2018) 1 CURCRIR 125, (2017) 3 ALLCRIR 2714, (2018) 183 ALLINDCAS 163 (SC), (2018) 1 MAD LJ(CRI) 262, (2017) 4 JLJR 191, (2018) 2 MH LJ (CRI) 1, (2018) 1 ALLCRILR 301, 2017 CRILR(SC&MP) 961, 2018 (1) SCC (CRI) 1, 2017 (4) KLT SN 57 (SC)

Author: D Y Chandrachud

Bench: D Y Chandrachud, A M Khanwilkar, Dipak Misra

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1723 OF 2017
[Arising out of SLP(CRL) No 9549 of 2016]

PARBATBHAI AAHIR @ PARBATBHAI
BHIMSINHBHAI KARMUR AND ORS ..Appellants

VERSUS

STATE OF GUJARAT AND ANR. ..Respondents

JUDGMENT

Dr D Y CHANDRACHUD, J 1 Leave granted.

2 By its judgment dated 25 November 2016, the High Court of Gujarat dismissed an application under Section 482 of the Code of Criminal Procedure, 1973. The appellants sought the quashing of a First Information Report registered against them on 18 June 2016 with the City 'C' Division Police Station, District Jamnagar, Gujarat for offences punishable under Sections 384, 467, 468, 471, 120-B and 506(2) of the Penal Code. The second respondent is the complainant.

3 In his complaint dated 18 June 2016, the second respondent stated that certain land admeasuring 17 vigha comprised in survey 1408 at Panakhan Gokulnagar in Jamnagar city was his ancestral agricultural land. The land was converted to non-agricultural use on 21 June 1995 and 5 January 2000 pursuant to orders of the District Collector. One hundred and three plots were carved out of the land. Amongst them, plots 45 to 56 admeasuring 32,696 sq.ft. were in the joint names of six brothers and a sister (represented by the complainant). According to the complainant, a broker by the name of Bachhubhai Veljibhai Nanda approached him with Parbatbhai Ahir, the first appellant stating that he desired to purchase the land. On the next day, the first appellant approached the complainant with his partner Hasmukhbhai Patel (the third appellant) to purchase the land. The complainant was requested to provide a photocopy of the lay out plan of the plot, which he did. On the following day the first appellant is alleged to have gone to the house of the complainant with the second and the third appellants at which point in time, parties agreed that the land would be sold at the rate of Rs 4,221 per sq.ft. and a deal was struck for a consideration of Rs.1,13,58,711/- out of which an amount of Rs 11 lakhs was given in cash to the complainant for plot no.56. The complainant's case is that while the discussion was on, he was requested by the second and the third appellants that since the power of attorney was old and unreadable all the plot holders should give their passport size photographs. Accordingly, a document was reduced to writing by which it was agreed that the sale transaction for plot no.56 would be completed within two months against full payment. According to the complainant, when he demanded the remaining payment for the plot from the second and third appellants, the second appellant provided him seven cheques each in the amount of Rs 6 lakhs in the name of the six brothers (one brother being given two cheques). Thereafter when the complainant followed up for the payment of the remaining amount with the purchasers, the balance was not paid and, on the contrary, the complainant was threatened of a forcible transfer of the land. According to the complainant, when he visited the office of the Sub-registrar about three days before lodging the complaint, it came to his knowledge that a sale deed has been registered not only in respect of the plot in question (which was agreed to be sold) but also in respect of plot nos.45 to 55 on 27 January 2016. It was then that the complainant realised that the purchaser in the sale deed was shown as the fourth appellant, Jayesh Arvindbhai Patel, and the name of the seventh appellant, Jitudan Nankudan Gadhavi, resident of Payalnagar society, Naroda, Ahmedabad was shown as the holder of a power of attorney. The witnesses to the registered sale deed were the fifth appellant, Rabari Hiteshbhai and the sixth appellant, Patel Indravaden Dineshbhai.

4 The complaint came to be lodged on the complainant having realised that the power of attorney in

the name of his siblings had been forged. The complainant stated that neither he nor any of his siblings had given a power of attorney in favour of the seventh appellant. According to the complainant, neither the non-judicial stamp dated 25 January 2016 in the amount of Rs 10,30,000/- nor the judicial stamp dated 27 January 2016 has been purchased by him. In fact, according to the complainant, it was the fourth appellant who had purchased the judicial stamp dated 27 January 2016. 5 According to the complaint, plots no.45 to 55 admeasuring 30,005 sq.ft. are valued at Rs 12.50 crores. It has been alleged that a conspiracy was hatched by the appellants and by the other co-accused resulting into the transfer of valuable land belonging to the complainant and his siblings, on the basis of forged documents.

6 The High Court noted that the fourth appellant had moved Special Criminal Application no.4538 of 2016 which had been rejected by the coordinate bench of the High Court on 3 August 2016. While rejecting the earlier application under Section 482, the High Court had observed thus:

> "19. Primary details revealed the complaint had led this Court examine the papers of the investigation. The evidence so far collected prima facie reveal the involvement of the petitioner. This Court also could notice that it is a case where under the pretext of buying only a particular Plot No.56 from the complainant and his family members, the power of attorney has been forged usurping nearly 10 other plots which value nearly 11 crores and odd by allegedly conniving with each other, and therefore, the payment of Rs 42 lakhs by the cheques to the complainant in relation to one of the plots also would pale into insignificance. This, by no means, even at a prima facie level, can be said to be a civil dispute, given a colour of criminality. It would be in the interest of both the sides for this Court to either, at this stage not to make a roving inquiry or divulge anything which may affect the ongoing investigation. Suffice it to note that, the petition does not deserved to be entertained an the same stands rejected." Before the High Court, the plea for quashing the First Information Report was advanced on the ground that the appellants had amicably settled the dispute with the complainant. The complainant had also filed an affidavit to that effect.

7 On behalf of the prosecution, the Public Prosecutor opposed the application for quashing on two grounds. First - the appellants were absconding and warrants had been issued against them under Section 70 of the Code of Criminal Procedure, 1973. Second, the appellants had criminal antecedents, the details of which are contained in the following chart submitted before the High Court:

> 1 Parbatbhai Bhimsinhbhai Karmur a. City "A" Division Jamnagar P.1 CR No 1-251/2010 2 Ramde Bhikha Nanadaniya P.2 a. City "A"Division Jamnagar b. City "A" Division Jamnagar CR No.1-105/2016 c. City "A" Division Jamnagar CR No.1-251/2010 3 Hasmukh Hansrajbhai Patel a. Gandhinagar M-Case No.1/2014 P.3 b. City "A" Division Jamnagar CR No.1-105/2016 4 Indravadan Dineshbhai Patel a. City "A: Division Jamnagar P.6 CR No.1-105/2016 5 Jitendra Somabhai Modi a. City "A" Division Jamnagar P.7 CR No.1-105/2016 b. Odhav Police Station CR No.I-180/2015 6 Vishnu @ Toto Rabari a. Gandhinagar M-Case No.1/2014 b. City "A:

> Division Jamnagar CR No.I-105/2016 The High Court observed that it had been given "a fair idea" about the modus operandi adopted by the appellants for grabbing the land, in the course of which they had opened bogus bank accounts. The High Court held that the case involves extortion, forgery and conspiracy and all the appellants have acted as a team. Hence, in the view of the High Court, it was not in the interest of society at large to accept the settlement and quash the FIR. The High Court held that the charges are of a serious nature and the activities of the appellants render them a potential threat to society. On this ground, the prayer to quash the First Information Report has been rejected.

8 On behalf of the appellants, reliance has been placed on the decisions rendered by this Court in Gian Singh v State of Punjab1 and in Narinder Singh v State of Punjab2. Learned counsel submitted that the dispute between the complainant and the appellants arose from a transaction for the sale of land. It was urged that the dispute is essentially of a civil nature and since parties have agreed to an amicable settlement, the proper course for the High Court would have been to quash the FIR in exercise of the jurisdiction conferred by Section 482 of the Code of Criminal Procedure, 1973. 1 (2012) 10 SCC 303 2 (2014) 6 SCC 466 9 On the other hand, learned counsel appearing on behalf of the state has supported the judgment of the High Court. Learned counsel emphasised the circumstances which weighed with the High Court, including (i) the seriousness of the allegations; (ii) the conduct of the appellants who were absconding; and (iii) the criminal antecedents of the appellants. Hence, it was urged that the appellants were not entitled to the relief of quashing the FIR merely because they had entered into a settlement with the complainant. 10 Section 482 is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice. In Gian Singh (supra) a bench of three learned Judges of this Court adverted to the body of precedent on the subject and laid down guiding principles which the High Court should consider in determining as to whether to quash an FIR or complaint in the exercise of the inherent jurisdiction. The considerations which must weigh with the High Court are:

> "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 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 flavour 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 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."

11 In Narinder Singh (supra), Dr Justice A K Sikri, speaking for a bench of two learned Judges of this Court observed that in respect of offences against society, it is the duty of the state to punish the offender. In consequence, deterrence provides a rationale for punishing the offender. Hence, even when there is a settlement, the view of the offender and victim will not prevail since it is in the interest of society that the offender should be punished to deter others from committing a similar crime. On the other hand, there may be offences falling in the category where the correctional objective of criminal law would have to be given more weightage than the theory of deterrence. In such a case, the court may be of the opinion that a settlement between the parties would lead to better relations between them and would resolve a festering private dispute. The court observed that the timing of a settlement is of significance in determining whether the jurisdiction under Section 482 should be exercised:

> "29.7...Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of

argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits…" This Court held, while dealing with an offence under Section 307 of the Penal Code that the following circumstances had weighed with it in quashing the First Information Report:

"33. We have gone through the FIR as well which was recorded on the basis of statement of the complainant/victim. It gives an indication that the complainant was attacked allegedly by the accused persons because of some previous dispute between the parties, though nature of dispute etc. is not stated in detail. However, a very pertinent statement appears on record viz., "respectable persons have been trying for a compromise up till now, which could not be finalized". This becomes an important aspect. It appears that there have been some disputes which led to the aforesaid purported attack by the accused on the complainant. In this context when we find that the elders of the village, including Sarpanch, intervened in the matter and the parties have not only buried their hatchet but have decided to live peacefully in future, this becomes an important consideration. The evidence is yet to be led in the Court. It has not even started. In view of compromise between parties, there is a minimal chance of the witnesses coming forward in support of the prosecution case. Even though nature of injuries can still be established by producing the doctor as witness who conducted medical examination, it may become difficult to prove as to who caused these injuries. The chances of conviction, therefore, appear to be remote. It would, therefore, be unnecessary to drag these proceedings…"

12 In State of Maharashtra v Vikram Anantrai Doshi3, a bench of two learned Judges of this Court explained the earlier decisions and the principles 3 (2014) 15 SCC 29 which must govern in deciding whether a criminal proceeding involving a non-compoundable offence should be quashed. In that case, the respondents were alleged to have obtained Letters of Credit from a bank in favour of fictitious entities. The charge-sheet involved offences under Sections 406, 420, 467, 468, and 471 read with Section 120-B of the Penal Code. Bogus beneficiary companies were alleged to have got them discounted by attaching fabricated bills. Mr Justice Dipak Misra (as the learned Chief Justice then was) emphasised that the case involved an allegation of forgery; hence the court was not dealing with a simple case where "the accused had borrowed money from a bank, to divert it elsewhere". The court held that the manner in which Letters of Credit were issued and funds were siphoned off had a foundation in criminal law:

"… availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposits fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominatingly of civil character. The ultimate victim is the collective. It creates a

hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation." The judgment of the High Court quashing the criminal proceedings was hence set aside by this Court.

13 The same principle was followed in Central Bureau of Investigation v Maninder Singh4 by a bench of two learned Judges of this Court. In that case, the High Court had, in the exercise of its inherent power under Section 482 quashed proceedings under Sections 420, 467, 468 and 471 read with Section 120-B of the Penal Code. While allowing the appeal filed by the Central Bureau of Investigation Mr Justice Dipak Misra (as the learned Chief Justice then was) observed that the case involved allegations of forgery of documents to embezzle the funds of the bank. In such a situation, the fact that the dispute had been settled with the bank would not justify a recourse to the power under Section 482:

"...In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved."

14 In a subsequent decision in State of Tamil Nadu v R Vasanthi Stanley5, the court rejected the submission that the first respondent was a

4 (2016) 1 SCC 389 5 (2016)1 SCC 376 woman "who was following the command of her husband" and had signed certain documents without being aware of the nature of the fraud which was being perpetrated on the bank. Rejecting the submission, this Court held that:

"... Lack of awareness, knowledge or intent is neither to be considered nor accepted in economic offences. The submission assiduously presented on gender leaves us unimpressed. An offence under the criminal law is an offence and it does not depend upon the gender of an accused. True it is, there are certain provisions in Code of Criminal Procedure relating to exercise of jurisdiction Under Section 437, etc. therein but that altogether pertains to a different sphere. A person committing a murder or getting involved in a financial scam or forgery of documents, cannot claim discharge or acquittal on the ground of her gender as that is neither constitutionally nor statutorily a valid argument. The offence is gender neutral in this case. We say no more on this score..." "...A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system..." 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;

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

(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;

(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;

(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;

(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;

(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;

(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;

(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.

16 Bearing in mind the above principles which have been laid down in the decisions of this Court, we are of the view that the High Court was justified in declining to entertain the application for quashing the First Information Report in the exercise of its inherent jurisdiction. The High Court has adverted to two significant circumstances. Each of them has a bearing on whether the exercise of the jurisdiction under Section 482 to quash the FIR would subserve or secure the ends of justice or prevent an abuse of the process of the court. The first is that the appellants were absconding and warrants had been issued against them under Section 70 of the Code of Criminal Procedure, 1973. The second is that the appellants have criminal antecedents, reflected in the chart which has been extracted in the earlier part of this judgment. The High Court adverted to the modus operandi which had been followed by the appellants in grabbing valuable parcels of land and noted that in the past as well, they were alleged to have been connected with such nefarious activities by opening bogus bank accounts. It was in this view of the matter that the High Court observed that in a case involving extortion, forgery and conspiracy where all the appellants were acting as a team, it was not in the interest of society to quash the FIR on the ground that a settlement had been arrived at with the complainant. We agree with the view of the High Court. The present case, as the allegations in the FIR would demonstrate, is not merely one involving a private dispute over a land transaction between two contesting parties. The case involves allegations of extortion, forgery and fabrication of documents, utilization of fabricated documents to effectuate transfers of title before the registering authorities and the deprivation of the complainant of his interest in land on the basis of a fabricated power of attorney. If the allegations in the FIR are construed as they stand, it is evident that they implicate serious offences having a bearing on a vital societal interest in securing the probity of titles to or interest in land. Such offences cannot be construed to be merely private or civil disputes but implicate the societal interest in prosecuting serious crime. In these circumstances, the High Court was eminently justified in declining to quash the FIR which had been registered under Sections 384, 467, 468, 471, 120-B and 506(2) of the Penal Code.

17 We do not, for the above reasons, find any merit in the appeal. The Criminal Appeal shall accordingly stand dismissed.

.....CJI [DIPAK MISRA] .....J [A M KHANWILKAR] .....J [Dr D Y CHANDRACHUD] New Delhi;

October 04, 2017