

# Amitbhai Rameshbhai Bhanvadiya vs State Of Gujarat on 7 January, 2025

R/SCR.A/16871/2024

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (FOR CONSENT QUASHING) NO.  
16871 of 2024

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AMITBHAI RAMESHBHAI BHANVADIYA

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR LAXMANSINH M ZALA(5787) for the Applicant(s) No. 1

DS AFF.NOT FILED (N) for the Respondent(s) No. 2

MR. PRANAV DHAGAT, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 07/01/2025

ORAL ORDER

1. The present petition is filed for seeking the following reliefs:

"a. Your Lordships may be pleased to admit and allow this application.

b. Your Lordships may be pleased to pass an order of quashing the impugned FIR at Annexure-A which was registered by the respondent No.2 with Gandhigram 2 University Police Station, Dist: Rajkot City, vide CR No. 11208003241226 of 2024 for the offence punishable u/s 352, 351 of The Bhartiya Nyaya Sanhita, 2023 and u/s 5, 40 and 42 of The Gujarat Money Lenders Act on 05.12.2024 and entire proceedings arising out of from the said FIR at ANNEX-A;

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undefined c. Any other and further order/relief (s) which this Hon'ble Court deems fit

in the interest of justice."

2. Learned advocate Mr. Mohitsinh Jadeja submits that he has instructions to appear for and on behalf of the original complainant - respondent No.2 and he will file vakalatnama on his behalf. The Registry to accept the same.

3. Heard learned advocates.

4. Mr. Laxmansinh M. Zala, learned advocate for the petitioner has submitted that the petitioner is having licence under the The Gujarat Money Lenders Act, 2011 and now the matter is amicably settled between the parties and affidavit to this effect is also filed by the complainant, who is present before this Court and has submitted that the matter is settled between the parties.

He has submitted that this petition may be considered and the impugned FIR may be quashed, qua the petitioner.

5. Learned advocate Mr. Jadeja for the original NEUTRAL CITATION R/SCR.A/16871/2024 ORDER DATED: 07/01/2025 undefined complainant has submitted that the settlement is arrived by and between the complainant and the petitioner and the complainant have no objection if the impugned FIR is quashed, qua the petitioner only. The complainant is present before this Court.

6. Learned APP for the State has vehemently opposed this petition. He has submitted that no interference is required to be called for this Court at this stage as prima facie case is made out.

7.1 I have considered the averments made in this petition, as well as the submissions made at the bar, and have interacted with the complainant, who is personally present before this Court. It transpires that the offence is registered under the provisions of Sections 352 and 351 of The Bhartiya Nyaya Sanhita, 2023, and under Sections 5, 40, and 42 of The Gujarat Money Lenders Act on 05.12.2024, as follows:

"351. (1) Whoever threatens another by any means, with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to NEUTRAL CITATION R/SCR.A/16871/2024 ORDER DATED: 07/01/2025 undefined cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.--A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration.

A, for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

(2) Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(3) Whoever commits the offence of criminal intimidation by threatening to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

(4) Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the NEUTRAL CITATION R/SCR.A/16871/2024 ORDER DATED: 07/01/2025 undefined threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence under sub-section (1).

352. Whoever intentionally insults in any manner, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

5. No business of money-lending except registration. (1) No Money-Lender shall commence or carry on the business of money-lending except in the area for which he has been granted a registration and except in accordance with the terms and conditions of such registration. (2) Non-banking finance companies registered under the provisions of the Reserve Bank of India Act, 1934, (2 of 1934) with the Reserve Bank of India shall be deemed to have been registered for the purposes of this Act and they shall intimate to the concerned Registrar about their such registration with the Reserve Bank of India in the prescribed proforma.

#### 40. Penalty for molestation.

- Whoever molests or abets the molestation of a debtor for the recovery' of a loan due by him to a Money-Lender shall, on conviction, be punished with imprisonment for a term NEUTRAL CITATION R/SCR.A/16871/2024 ORDER DATED: 07/01/2025 undefined which may extend to two years and with fine which may extend to twenty-five thousand rupees :

Provided that in absence of the special and adequate reasons to the contrary to be mentioned in the judgements of the Court -

(i) for the first offence, such imprisonment shall not be less than six months and such fine shall not be less than ten thousand rupees;

(ii) for the second and subsequent offences, such imprisonment shall not be less than one year and such fine shall not be less than twenty-five thousand rupees.

Explanation. - For the purposes of this section, a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing-

(a) obstructs or uses violence to or intimidates such other person, or

(b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in the use thereof, or

(c) loiters near a house or other place where such other person resides or works, or carries on business, or happens to be, or does any act calculated to annoy or intimidate such other person, shall be deemed to molest such other person :

Provided that a person who goes to such house or place in order merely to obtain or communicate information shall not be deemed to molest.

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undefined

42. Penalty for contravention of section 5,19,33 or 38.

- Whoever-

(a) carries on the business of money-lending in any area without registration in contravention of section 5; or

(b) fails to produce any record or document in compliance with any requirement made under sub-section (1) of section 19 or knowingly produces any false record or document; or

(c) obstructs any officer making an entry, inquiry, search, seizure or entrance under sub-section (2) of section 19: or

(d) demands, charges or receives from a debtor the interest at higher rate in contravention of sub-section (3) of section 33; or

(e) accepts any promissory note, acknowledgement bond or other writing or document or any instrument in contravention of section 38; or

(f) tempers with debtors' record or transaction or makes a wrongful or false entry therein or tempers or mutilates or destroys pawn or property -

shall on conviction, be punished with imprisonment for a term which may extend to two years and with fine which may extend to twenty-five thousand rupees :

Provided that in absence of the special and adequate reason to the contrary to be mentioned in the judgements of the Court -

(i) for the first offence, such imprisonment shall not be less than three months and such fine shall not be less than five thousand rupees,

(ii) for the second and subsequent offences, such imprisonment shall not be less than six months and such fine shall not be less than ten thousand rupees."

NEUTRAL CITATION R/SCR.A/16871/2024 ORDER DATED: 07/01/2025 undefined 7.2 Furthermore, it is a requirement under the law that even a person holding a licence under the Gujarat Money Lenders Act, 2011, the person cannot charge interest on the amount beyond the permissible rate, which is fixed by the Reserve Bank of India. In the present case, as per the allegations made in the FIR, after holding a licence for money lending, interest is allegedly charged at the rate of 3% per month. Such activity is now causing a lot of harassment to the poor and needy persons, particularly in the State i.e. Saurashtra region of the State. Due to such incidents, the entire family of the victim is ruined, as any family member who borrows money is subjected to tortuous interest rates, forcing them to borrow more from others, thus entering a vicious cycle.

7.3 It is also important to note that such incidents are reported in the newspapers, and many cases are coming before this Court where the person, or the entire family of the victim, has to commit suicide due to burden of payment of such amount of interest and after paying substantial amount by way of interest. The persons NEUTRAL CITATION R/SCR.A/16871/2024 ORDER DATED: 07/01/2025 undefined involved in such financing are often either having strong background or have criminal antecedents or history, or are connected to politicians or law enforcement agencies.

Therefore, due to the connivance of responsible individuals, concrete actions could not have been taken in such incidents, where society at large suffers due to the illegal activities carried out by such financiers. Even in the present case, though there is a licence under The Gujarat Money Lenders Act, there is a clear violation of the terms of the licence by charging exorbitant interest.

Furthermore, in many cases, even when individuals are not holding a licence under The Gujarat Money Lenders Act, they still charge interest at rates ranging from 3% per month to 15% per month. In the present case, the rate of interest is allegedly charged at 3% per month.

Merely because the complainant has agreed to settle the dispute is not a good ground for quashing of the presett FIR. Additionally, it cannot be said that such offences are not compoundable under the law.

7.4 Furthermore, it is useful to refer to the decision of the Hon'ble Apex Court in its recent judgment in the case of K. Bharthi Devi and Another vs. State of NEUTRAL CITATION R/SCR.A/16871/2024 ORDER DATED: 07/01/2025 undefined Telangana and Another, reported in MANU/SC/1083/2024, particularly in paragraphs 30 and 32, wherein, the scope of compromise and quashing of complaint has been discussed. These paragraphs are as follows:

"30. Subsequently, a 2 Judge Bench of this Court in the case of Narinder Singh and others (supra), after considering the earlier pronouncements of this Court, culled out the position thus:

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution. 29.2. When the parties have reached the settlement and on NEUTRAL CITATION R/SCR.A/16871/2024 ORDER DATED: 07/01/2025 undefined that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

- (i) ends of justice, or
- (ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve 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. Similarly, for the offences alleged to have been

committed under special statute 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.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves. 29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

NEUTRAL CITATION R/SCR.A/16871/2024 ORDER DATED: 07/01/2025 undefined 29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship. 29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the NEUTRAL CITATION R/SCR.A/16871/2024 ORDER DATED: 07/01/2025 undefined 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 and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground

to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

32. Though in the said case, the High Court had refused to exercise its jurisdiction under Section 482 CrPC to quash NEUTRAL CITATION R/SCR.A/16871/2024 ORDER DATED: 07/01/2025 undefined the proceedings wherein a serious offence under Section 307 IPC was involved, this Court after taking into consideration various factors including that the elders of the village, including the Sarpanch, had intervened in the matter and the parties had not only buried their hatchet but had decided to live peacefully in the future, quashed and set aside the criminal proceedings under Section 307 IPC."

7.5 Considering the fact that this is high time that this Court has to read between the lines about such incident and the Court has to refuse to quash the proceedings in such matters, which are having direct bearing on the social harmony and well-being of the family life of the innocent citizens and, therefore, I am of the view that this is not a fit case where this Court should exercise its discretion in favour of the present petitioner. The present petition therefore needs to be dismissed and is dismissed, accordingly with no order as to costs.

(SANDEEP N. BHATT,J) DIWAKAR SHUKLA