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RAFIQ AHMEDBHAI PALIWALA

v.

THE STATE OF GUJARAT & ORS.

(Criminal Appeal No. 506 of 2019)

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MARCH 15, 2019

**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

- Code of Criminal Procedure, 1973 – s.482 – Petition u/s.482, CrPC filed by respondent nos. 2 to 17 – High Court allowing the same, quashed the FIR insofar it related to the offences punishable u/ss.392, 395 and 397, IPC while upheld it insofar it related inter alia to the offences punishable u/ss. 143, 147, 148 and 323, IPC – Held: High Court erred in entertaining the petition filed by the respondents and further erred in allowing it in part – No proper investigation could be made by the Investigating Officer (IO) much less concluded on the basis of the FIR lodged by the complainant and before it could be brought to its logical conclusion, the impugned order intervened resulting in quashing of the FIR itself in relation to cognizable offences which were of more serious in nature than the remaining ones which survived for being tried – Impugned order set aside – IO to make proper investigation into the allegations made in the original FIR lodged and after conclusion of the investigation to file additional charge sheet in relation to any other offences, if found made out.*

Allowing the appeal, the Court

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HELD: 1.1 The High Court erred in entertaining the petition filed by respondent Nos. 2 to 17 under Section 482 of the Code of Criminal Procedure, 1973 and further erred in allowing it in part. No proper investigation could be made by the Investigating Officer (IO) much less concluded on the basis of the FIR lodged

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by the complainant and before it could be brought to its logical conclusion, the impugned order intervened resulting in quashing of the FIR itself in relation to cognizable offences which were of more serious in nature than the remaining one which survived for being tried. [Paras 9, 10][221-A, B]

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1.2 The High Court instead of quashing the FIR at such a preliminary stage should have directed the IO to make proper investigation on the basis of the FIR and then file proper charge sheet on the basis of the material collected in the investigation accordingly. It was, however, not done. It was more so because the FIR did disclose *prima facie* allegations of commission of concerned offences. The approach of the High Court, therefore cannot be countenanced when it proceeded to quash the FIR partly in relation to more serious offences (Sections 392, 395 and 397 IPC) without allowing the IO to make proper investigation into its allegations. [Paras 11, 12][221-C, D]

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1.3 The impugned order is set aside. It is, however, informed that pursuant to the directions issued by the High Court, the charge sheet has been filed in relation to the minor offences, which survived after quashing of the FIR. Be that as it may, the IO shall now make full and proper investigation into the allegations made in the original FIR lodged and after conclusion of the investigation will file additional charge sheet in relation to any other offences, if found made out. [Paras 13, 14][221-E, F]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 506 of 2019.

E

From the Judgment and Order dated 11.12.2017 of the High Court of Gujarat at Ahmedabad in Criminal Misc. Application No.29936 of 2017.

Pradhuman Gohil, Mrs. Taruna Singh Gohil, Himanshu Chaubey, Ms. Tanvi Bhatnagar, Advs. for the Appellant.

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Jesal Wahi, Ms. Hemantika Wahi, Ms. Vishakha, C.B. Gururaj, K.P. Singh, Prakash Ranjan Nayak, Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

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2. This appeal is directed against the final judgment and order dated 11.12.2017 passed by the High Court of Gujarat at Ahmedabad in Criminal Misc. Application(for quashing & Set aside FIR) No.29936 of 2017 whereby the High Court allowed the said application filed by respondent Nos.2-17 herein.

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- A 3. This appeal involves a short point as would be clear from the facts stated *infra*.
- B 4. By impugned order, the High Court, in exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, 1973(hereinafter referred to as “the Code”) allowed the petition filed by respondent Nos. 2 to 17 herein and quashed FIR being I-CR No. 67 of 2017 registered with the Gaekwad Haveli Police Station, Ahmadabad in part insofar it relates to the offences punishable under Sections 392, 395 and 397 of the Indian Penal Code, 1860(hereinafter referred to as “IPC”) and upheld it insofar as it relates to the offences punishable under Sections 143, 147, 148 and 323 of IPC read with Section 135 (1) of the GP Act.
- C 5. The complainant has felt aggrieved by the impugned order and has filed this appeal by way of special leave in this Court.
- D 6. So, the short question, which arises for consideration in this appeal, is whether the High Court was justified in allowing the petition and quashing the FIR insofar as it relates to the offences punishable under Sections 392, 395 and 397 IPC.
- E 7. The order impugned reads as under:
- “Having heard the learned counsel appearing for the parties and having considered the materials on record, I am of the view that even if the entire case of the prosecution is believed or accepted as true, none of the ingredients to constitute the offence of Sections 392, 395 or 397 are spelt out. By any stretch of imagination, it cannot be said that the common object of the unlawful assembly was to commit dacoity.**
- F **In such circumstances, I have no hesitation in quashing the FIR so far as Sections 392, 395 and 397 of the Indian Penal Code is concerned. So far as the other offences are concerned, the investigation shall proceed in accordance with law.**
- G **With the above, this application is disposed of. Direct service is permitted.”**
- H 8. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal and set aside the impugned order.

9. In our view, the High Court erred in entertaining the petition filed by respondent Nos. 2 to 17 under Section 482 of the Code and further erred in allowing it in part. A

10. It is not in dispute that no proper investigation could be made by the Investigating Officer (IO) much less concluded on the basis of the FIR lodged by the complainant and before it could be brought to its logical conclusion, the impugned order intervened resulting in quashing of the FIR itself in relation to cognizable offences which were of more serious in nature than the remaining one which survived for being tried. B

11. The High Court, in our view, instead of quashing the FIR at such a preliminary stage should have directed the IO to make proper investigation on the basis of the FIR and then file proper charge sheet on the basis of the material collected in the investigation accordingly. It was, however, not done. It was more so because, we find that FIR did disclose *prima facie* allegations of commission of concerned offences. C

12. We cannot, therefore, countenance the approach of the High Court when it proceeded to quash the FIR partly in relation to more serious offences (Sections 392, 395 and 397 IPC) without allowing the IO to make proper investigation into its allegations. D

13. In the light of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. E

14. We are, however, informed that pursuant to the directions issued by the High Court, the charge sheet has been filed in relation to the minor offences, which survived after quashing of the FIR. Be that as it may, the IO shall now make full and proper investigation into the allegations made in the original FIR lodged and after conclusion of the investigation will file additional charge sheet in relation to any other offences, if found made out. F

15. Needless to say, the IO will make investigation strictly in accordance with law without being influenced by any observations. Let this be done within 3 months as an outer limit. G