

XYZ
v.
The State of Gujarat & Anr.

(Criminal Appeal No. 4463 of 2024)

5 November 2024

[Abhay S. Oka* and Augustine George Masih, JJ.]

Issue for Consideration

Whether criminal proceedings for non-compoundable offences can be quashed on the ground of settlement.

Headnotes[†]

Criminal law – Quashing of criminal proceedings for non-compoundable offences by High Court under Section 482 Cr.P.C. or Article 226 of the Constitution of India on the ground of settlement – Advisable to procure presence of victim either personally or through video conferencing:

Held: When petitions are filed before the High Court by invoking either Article 226 of the Constitution of India or Section 482 of the Code of Criminal Procedure, 1973 for quashing of criminal proceedings of non-compoundable offences on the ground of settlement, the High Court must satisfy itself that there is a genuine settlement between the victim and the accused – Without the Court being satisfied with the existence of a genuine settlement, the petition for quashing cannot proceed further – If the Court is satisfied about the existence of a genuine settlement, the other question to be considered is whether in the facts of the case, the power of quashing deserves to be exercised – Even if an affidavit of the victim accepting the settlement is on record, in cases of serious offences and especially against women, it is always advisable to procure the presence of the victim either personally or through video conference so that the Court can properly examine whether there is a genuine settlement and that the victim has no subsisting grievance. [Para 7]

Affidavit by illiterate person:

Held: When illiterate persons affirm such affidavits for settlement by putting their thumb impressions, usually, the affidavit must bear

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an endorsement that the contents of the affidavit were explained to the person affirming the same. [Para 7]

Criminal law – Procedure to be adopted by High Court for quashing criminal proceedings on the ground of settlement:

Held: The Complainant may file an Affidavit on the aspect of settlement before the High Court – After considering all the relevant materials, if necessary, the High Court can always order an inquiry to be held by a Judicial Officer on the question of whether there was a settlement between the victim and the accused and whether the affidavits were affirmed after explaining the contents thereof to the victim – If the High Court finds that there was, in fact, a settlement arrived between the victim and the accused, the High Court will have to consider the question of whether the power under Section 482 of Cr.P.C. or Article 226 of the Constitution can be exercised to quash the criminal proceedings based on compromise. [Paras 13, 14]

List of Acts

Criminal Procedure Code, 1973; Penal Code, 1860.

List of Keywords

Quashing of non-compoundable offences; Quashing on the ground of settlement.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4463 of 2024

From the Judgment and Order dated 29.09.2023 of the High Court of Gujarat at Ahmedabad in CRMA No. 15041 of 2023

Appearances for Parties

Ms. Indira Jaising, Sr. Adv., Paras Nath Singh, Rohin Bhatt, Sadeeq UR Rahman, Advs. for the Appellant.

Ms. Ruchi Kohli, Rakesh Khanna, Sr. Advs., Ms. Swati Ghildiyal, Ms. Devyani Bhatt, Ms. Abhipsa Mohanty, Ms. Shrishti Mishra, Rakesh Malhotra, Ms. Savita Singh, Kushal Malhotra, Advs. for the Respondents.

Digital Supreme Court Reports**Judgment / Order of the Supreme Court****Judgment****Abahy S. Oka, J.**

1. Leave granted.

FACTUAL DETAILS

2. The appellant is the first informant. A First Information Report was registered at the instance of the appellant for the offences punishable under Sections 376(2)(N) and 506 of the Indian Penal Code, 1860 (for short, 'the IPC'). The offences under Section 3(1)(R), 3(1)(w) and 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Atrocities Act') were also alleged. The second respondent is the accused named in the FIR. A charge sheet was filed against the second respondent for the said offences.
3. The second respondent filed a petition before the High Court for quashing the charge sheet based on the settlement allegedly arrived at between the parties. The High Court, by the impugned judgment and order, has proceeded to quash the criminal proceedings with a direction that the compensation received by the appellant under the Atrocities Act shall be refunded to the concerned authority.

SUBMISSIONS

4. The contentions raised by the learned Senior Counsel appearing for the appellant can be summarized as follows:
 - (a) The High Court ought not to have quashed the criminal proceedings without securing the personal presence of the appellant before it and without verifying from the appellant whether there was a settlement;
 - (b) Inviting our attention to the affidavits allegedly affirmed by the appellant, which are referred to in paragraph 5 of the impugned judgment, she submitted that, on the face of it, the affidavits are suspicious. The first affidavit is in English and was executed at Ahmedabad on 18th August 2023. The second affidavit, which is in Gujarati language, was allegedly executed by the appellant on the same day at Rajkot. The appellant is illiterate and has

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allegedly put her thumb impressions on the affidavits. She submitted that there is no endorsement on the affidavit made by the witness or Advocate representing the appellant or the notary public that the contents of the affidavit were explained to her. It is submitted that in the absence of any such endorsement, the High Court ought not to have relied upon the affidavits and that also without securing the personal presence of the appellant and without verifying from the appellant whether there was a settlement;

- (c) She submitted that, as pointed out in the counter filed by the second respondent, an objectionable practice was followed of producing the affidavits signed by the complainant/victim along with the quashing petition. She invited our attention to what is stated in paragraph 16 of the counter filed by the second respondent;
 - (d) Her submission is that the High Court has not done its duty of verifying whether there was any settlement;
 - (e) Her submission is that it is not clear whether the Advocate whose appearance is shown in the impugned judgment as representing the appellant had filed vakalatnama/ authority signed by the appellant;
 - (f) Her contention is that since the affidavits are no affidavits in the eyes of law, the same cannot be the basis of recording a finding that there was a settlement. She submitted that these things are suspicious which call for inquiry and
 - (g) Even assuming there was a settlement, the High Court ought not to have quashed the charge sheet considering the gruesome nature of the offence, which is against society.
5. Learned Senior Counsel appearing for the second respondent pointed out that the affidavit in English is also executed at Rajkot. Inviting our attention to the said affidavit, he submitted that as the same was to be filed in the quashing petition to be filed in the High Court of Gujarat at Ahmedabad, the title of the affidavit is "In the High Court of Gujarat at Ahmedabad", but the stamp of the notary shows that it was executed at Rajkot. He submitted that the affidavits had been counter-signed by the appellant's brother (Mohan Chauhan). He pointed out that copies of the Aadhar cards were annexed to the

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affidavits. He also invited our attention to a letter dated 11th November, 2023 in the Hindi language sent by the appellant to the Officer-in-charge of the concerned police station and, in particular, the last paragraph of the said letter, which records that she had affixed her thumb impressions on certain documents and the second respondent paid a sum of Rs.3,00,000/- to her husband. He submitted that, as stated in the counter affidavit, on a date fixed for hearing of the bail application filed before the High Court by the second respondent, the appellant was personally present in the High Court along with her husband.

6. Learned Senior Counsel representing the State has supported the submissions made by learned Senior Counsel appearing for the appellant.

OUR VIEW

7. The offences alleged were very serious. The offences alleged were under Section 376(2)(N) of the IPC and the Atrocities Act. When petitions are filed before the High Court by invoking either Article 226 of the Constitution of India or Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') for quashing criminal proceedings of non-compoundable offences on the ground of settlement, the High Court must satisfy itself that there is a genuine settlement between the victim and the accused. Without the Court being satisfied with the existence of a genuine settlement, the petition for quashing cannot proceed further. If the Court is satisfied about the existence of a genuine settlement, the other question to be considered is whether in the facts of the case, the power of quashing deserves to be exercised. Even if an affidavit of the victim accepting the settlement is on record, in cases of serious offences and especially against women, it is always advisable to procure the presence of the victim either personally or through video conference so that the Court can properly examine whether there is a genuine settlement and that the victim has no subsisting grievance.

It was all the more necessary in the present case as the affidavits filed on record indicate that the appellant is an illiterate woman. Both the affidavits bear thumb impressions of the appellant, which were identified by her brother Mohan Chauhan. When illiterate persons affirm such affidavits by putting their thumb impressions,

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usually, the affidavit must bear an endorsement that the contents of the affidavits were explained to the person affirming the same. After noticing the absence of such an endorsement, the High Court ought to have directed the appellant to personally remain present before the Court so that the High Court could have verified whether the appellant had put her thumb impressions on the affidavits after she was informed about the contents of the affidavit and after she had fully understood the contents of the affidavit. In this case, two affidavits were executed on the same day. That should have one more reason before the High Court to be very cautious before acting upon the affidavits.

8. Now, a contention has been raised by the appellant that thumb impressions have been taken on the typed affidavits in suspicious circumstances without explaining the contents thereof. The allegation is that the second respondent was the appellant's employer.
9. As the High Court has passed the impugned judgment and order without verifying whether there was a genuine settlement between the appellant and the second respondent, the impugned judgment and order cannot be sustained.
10. We are, therefore, inclined to remand the case to the High Court with a direction to the appellant to remain present before the High Court on the date fixed by this Court. The High Court will allow the appellant to explain her position vis-`a-vis the stand taken by the second respondent about the settlement. After hearing the appellant, the High Court would be well within its powers to order an inquiry to be held by a Judicial Officer about the manner in which the affidavits have been executed and on the question of whether the thumb impressions of the appellant were taken on the affidavits without explaining to her the contents of the affidavits.
11. It will always be open for the appellant to file an affidavit before the High Court on the issue of settlement.
12. Accordingly, we set aside the impugned judgment and order dated 29th September, 2023 and restore Criminal Miscellaneous Application (for quashing and setting aside the FIR/order) No.15041 of 2023 to the file of the High Court. We direct that the restored petition be listed before the Roster Bench before the High Court on 2nd December, 2024 in the morning when the appellant and the second respondent

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shall remain present before the High Court. Even the State shall be represented before the High Court on that day.

13. It will be open for the appellant to file an affidavit on the aspect of settlement before the High Court. After considering all the relevant materials, if necessary, the High Court can always order an inquiry to be held by a Judicial Officer on the question of whether there was a settlement between the appellant and the second respondent and whether the affidavits were affirmed after explaining the contents thereof to the appellant.
14. If the High Court finds that there was, in fact, a settlement arrived between the appellant and the second respondent, the High Court will have to consider the question of whether the power under Section 482 of Cr.P.C. or Article 226 of the Constitution can be exercised to quash the criminal proceedings based on compromise. All questions in that behalf are kept open.
15. The Registry shall forward a copy of this judgment to the Registrar (Judicial) of the High Court of Gujarat at Ahmedabad, who shall ensure that the restored petition is listed before the Roster Bench as directed above.
16. The Appeal is partly allowed on the above terms.
17. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal partly allowed.

[†]*Headnotes prepared by:* Vidhi Thaker, Hon. Associate Editor
(Verified by: Kanu Agrawal, Adv.)