

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 41 of 2024**

=====

MEHBOOB OHAMADHANIF MANSURI
Versus
STATE OF GUJARAT

=====

Appearance:

MS MEHJABIN I BOLWALA(11157) for the Applicant(s) No. 1
MR.WASIM M PATHAN(6802) for the Respondent(s) No. 2
MR CHINTAN DAVE, APP for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 18/01/2024

ORAL ORDER

Leave to amend.

1. Heard learned advocate Ms.M.I. Bolwala for the petitioner, learned APP Mr. Chintan Dave for the respondent No.1-State and learned advocate Mr.W.M. Pathan for the respondent No.2 – original complainant.
2. **RULE.** Learned advocates waive service of notice of rule on behalf of the respective respondents.
3. Considering the facts and circumstances of the case and since it is jointly stated at the Bar by learned advocates on both the sides that the dispute between the parties has been resolved amicably, this matter is taken up for final disposal forthwith.
4. By way of this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."),

the applicant has prayed to quash and set aside the complaint being FIR being **CR No.11191028230930 OF 2023** registered with Vejalpur Police Station, Ahmedabad for the offences under Sections 406, 420 and 506(2) of Indian Penal Code, 1860 and all the consequential proceedings arising therefrom.

5. Going through the materials available on record, it appears that complaint is filed at the instance of respondent No.2 against the present petitioner. It is alleged that the present petitioner/accused has given assurance to the complainant to lodge the complaint against the in-laws of the complainant and to expedite the said proceedings of the complaint. He has asked for the money and she has paid Rs.1,45,000/- and thereby he has committed Criminal breach of trust and offence of the cheating with the present complainant. In this regard complaint came to be filed. Petitioner is ready and willing to return the money as asked for the complainant. I.O. has also remained present before this Court and I.O. has investigated qua fact of the settlement and has confirmed about the factum of the settlement. Now, dispute is settled between the parties as the same is private in nature, In view of above, the present application deserves consideration.

6. Learned advocates for the respective parties submitted that during the pendency of proceedings, the parties have settled the dispute amicably and pursuant to such mutual settlement, the original complainant has also filed an Affidavit,

which is taken / placed on record. In the Affidavit, the original complainant have categorically stated that the dispute with the applicant has been resolved amicably and that he has no objection, if the present proceedings are quashed and set aside since there is no surviving grievance between them.

7. Having heard learned advocates on both the sides and considering the facts and circumstances of the case as also the principle laid down by the Apex Court in the cases of **(i) Gian Singh Vs. State of Punjab & Anr.**, reported in **(2012) 10 SCC 303**, **(ii) Madan Mohan Abbot Vs. State of Punjab**, reported in **(2008) 4 SCC 582**, **(iii) Nikhil Merchant Vs. Central Bureau of Investigation & Anr.**, reported in **2009 (1) GLH 31**, **(iv) Manoj Sharma Vs. State & Ors.**, reported in **2009 (1) GLH 190** and **(v) Narinder Singh & Ors. Vs. State of Punjab & Anr.** reported in **2014 (2) Crime 67 (SC)**, in the opinion of this Court, the further continuation of criminal proceedings against the applicant/s in relation to the impugned FIR would cause unnecessary harassment to the applicant/s. Further, the continuance of trial pursuant to the mutual settlement arrived at between the parties would be a futile exercise. Hence, to secure the ends of justice, it would be appropriate to quash and set aside the impugned FIR and all consequential proceedings initiated in pursuance thereof under Section 482 of the Cr.P.C..

7.1. Considering the fact that petitioner is also facing charge under Sections 406, 420. In this regard, It would be apposite to

refer the decision of the Hon'ble Apex Court in case of **Sarabjit Kaur vs. State of Punjab and Another** reported in **(2023) 5 SCC 360**.

7.2. So far as offence under Section 506(2) of IPC is concerned, the learned Apex Court in the case of **Mohammad Wajid and Anr. v. State of U.P. and Ors., reported in 2023 LiveLaw (SC) 624: 2023 INSC 683**, has held that:

"Indian Penal Code, 1860; Section 506 - Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant. (Para 27) 3 Interpretation of Statutes- All penal statutes are to be construed strictly - Court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the words. (Para 19-21)"

8. In the opinion of this Court, the further continuation of criminal proceedings against the applicant/s in relation to the impugned FIR would cause unnecessary harassment to the applicant/s. Further, the continuance of trial pursuant to the mutual settlement arrived at between the parties would be a futile exercise. Hence, to secure the ends of justice, it would be appropriate to quash and set aside the impugned FIR and all consequential proceedings initiated in pursuance thereof under Section 482 of the Cr.P.C..

9. In the aforesaid backdrop, complaint is filed. It is necessary to consider whether the power conferred by the High Court under section 482 of the Code of Criminal Procedure is warranted. It is true that the powers under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage as the Hon'ble Supreme Court has decided in the case of **Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS & Anr.**, reported in **AIR 2006 SC 2872** and **State of Haryana and others vs. Bhajan Lal and others** reported in **[(1992) Supp (1) SCC 335]** and in case of **State of Haryana v. Bhajan Lal**, reported in **1992 Supp (1) SCC 335**, the Apex Court has set out the categories of cases in which the inherent power under Section 482 CrPC can be exercised and held in para 102 as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the

principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Art. 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

10. In the result, the application is allowed. The impugned complaint being **CR No.11191028230930 OF 2023** as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside qua the applicant/s herein. Rule is

made absolute. Direct service is permitted.

11. If the applicant/s is/are in jail, the jail authority concerned is directed to release the applicant/s forthwith, if not required in connection with any other case.

KUMAR ALOK

(HASMUKH D. SUTHAR,J)