

Gujarat High Court

Govindbhai Arjanbhai Divani ... vs State Of Gujarat on 12 June, 2023

Bench: Sandeep N. Bhatt

R/CR.MA/7868/2021

ORDER DATED: 12/06/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 7868 of 2021

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GOVINDBHAI ARJANBHAI DIVANI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR NR KODEKAR(5020) for the Applicant(s) No. 1,2

MR ROMIL L KODEKAR(5127) for the Applicant(s) No. 1,2  
for the Respondent(s) No. 2

MS SHEEJA G NAYAR(5458) for the Respondent(s) No. 3

MR DHAWAN JAISWAL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 12/06/2023

ORAL ORDER

1. By way of present application, under Section 482 of the Code of Criminal Procedure, 1973, the applicants seek quashment of the impugned FIR being CR-I No.11205035210212 registered with the Nakhatrana Police Station, District : Kachchh West - Bhuj for the offences punishable under Sections 323, 324, 504, 506(2), 342 and 114 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 135 of the Gujarat Police Act.

2. The brief facts of the prosecution case are that R/CR.MA/7868/2021 ORDER DATED: 12/06/2023 the complainant has approached the accused No.1 - applicant No.1 at his office for the outstanding amount for the labour work done by him before about ten years. The complainant went to the office of the accused and demanded such amount and thereby scuffle has happened and that the complainant has received injury during such incident and therefore, the impugned FIR.

3. Heard learned advocates.

4. Rule. Learned APP waives service of notice of rule on behalf of the State. Learned advocate for the complainant is not present. The complainant has not filed any reply / affidavit contesting this application. Looking to the pendency, this Court has no option but to proceed with the matter in

absence of the complainant.

5.1 Learned advocate Mr.Nachiket R. Kodekar for the applicants has drawn the attention of this Court towards the contents of the FIR. He has submitted that the complainant has demanded money for the labour charges for the work which he has allegedly done before about ten years. He has submitted that at that time, the labour charges were paid to all the labourers and there is no outstanding as on date qua the labour charges. He has submitted that the complainant R/CR.MA/7868/2021 ORDER DATED: 12/06/2023 has time and again threatened to him and for that, the applicant/s has made several written complaints to the police authorities for the same and thereby apprehending the complaint against him by the complainant and/or his relatives. He has submitted that he has produced on record all the written complaints made by him to the police authorities which are of the year 2018, 2019 and 2021, but the authorities did not pay any heed towards it. He has submitted that the complainant has filed this frivolous complaint. He has submitted that looking to the entire contents of the complaint, no offence is made out against the present applicant. He has submitted that this application may be allowed.

5.2 He has also drawn the attention of this Court to the order passed by this Court on 03.07.2019 recorded on Criminal Misc. Application No.12279 of 2019, wherein similar nature of complaint made by the relative of the present complainant against the applicant is stayed.

6. Learned APP has strongly opposed this application. He has submitted that there is recovery and discovery regarding weapons - stick / knife used in the offence. He has submitted that medical certificate shows that the complainant received injuries. He has submitted that this Court may not R/CR.MA/7868/2021 ORDER DATED: 12/06/2023 exercise the powers under Section 482 of the Code of Criminal Procedure, 1973 in favour of the applicants and this application may be dismissed.

7. I have heard rival submissions made by the learned advocates for the respective parties. I have also considered the material available on record. I have also perused the FIR as well as the police papers available with the learned APP. Considering the facts and circumstances of the case, the following factors needs to be kept in mind while considering this application.

The work of labourer was done before ten years. The complainant has time and again threatened the applicant/s.

The applicant/s has filed written complaint to the police authorities in the year time and again, but the authorities did not pay any heed towards it. There is no independent eye witness to the incident. The basic dispute is of the civil nature. The complainant, on his own, went to the office of the applicant/s and not the applicant/s.

There may be exchange of words between the complainant and the applicant/s in the private premises i.e. office of the applicant/s and not in public premises R/CR.MA/7868/2021 ORDER DATED: 12/06/2023 and therefore, provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act does not attract.

The tenor of lodging the complaint is not believable. This Court has granted stay against the similar nature of offence filed by the other complainant who happened to be the close relative of the present complainant, which is later point of time.

The conduct of the complainant also smacks lot.

8. Considering the totality of the case, this is a fit case to exercise the powers under Section 482 of the Code of Criminal Procedure, 1973 in favour of the applicants keeping in mind the observations made by the Hon'ble Apex Court in the case of State of Haryana V/s Bhajan Lal reported in AIR 1992 SC 604, which reads as under :

"In the backdrop of the interpretation of the various relevant provisions of the Code under Ch.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 sec.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, R/CR.MA/7868/2021 ORDER DATED: 12/06/2023 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.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under sec.156(1) of the Code except under an order of a Magistrate within the purview of sec.155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under sec.156(2) of the Code.

R/CR.MA/7868/2021 ORDER DATED: 12/06/2023 (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."

9. At this stage, it is also relevant to refer to the judgment of the Hon'ble Apex Court in the case of Inder Mohan Goswami and Another versus State of Uttaranchal reported in (2007) 12 SCC 1, more particularly para : 23 & 24 thereof, which read as under :

"23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Sec. 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the R/CR.MA/7868/2021 ORDER DATED: 12/06/2023 administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Sec. 482 CrPC can be exercised:

[(i) to give effect to an order under the Code;] [(ii) to prevent abuse of the process of court, and] [(iii) to otherwise secure the ends of justice.]

24. Inherent powers under Sec. 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself'. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute. Discussion of decided cases."

10. In view of above, the impugned FIR needs to be quashed and set aside.

11. With great pain it is noted that, many a time, the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are being misused, some time by the complainant and/or some time by the authorities. Here is the glaring example. The place of offence is the private place i.e. office premises and not the public place. Many a time, even the police authorities do not apply their mind while registering the offence and applying the provisions of R/CR.MA/7868/2021 ORDER DATED: 12/06/2023 law in a mechanical manner. There is a Special Cell for the Scheduled Castes and Scheduled Tribes for the cases under this provisions. Even the higher officer of that Cell does not bother to verify as to whether the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are applicable to the particular offence or not. In such situation, the sufferer would be the general public qua these provisions only. There may be an offence under the

other provisions/Act which may be dealt with appropriately by the authorities. I have come across many such cases and therefore, I do not restrain myself from observing such things. I hope that the authority to develop such wisdom in appropriate cases.

12. For the reasons recorded above, the following order is passed.

12.1 This application is allowed.

12.2 The impugned FIR being CR-I No.11205035210212

registered with the Nakhatrana Police Station, Distri

Kachchh West - Bhuj is quashed and set aside. 12.3 Consequently, the subsequent proceedings, if any, arising out of the same FIR are also hereby quashed and set R/CR.MA/7868/2021 ORDER DATED: 12/06/2023 aside.

12.4 Compensation received by the complainant pursuant to the complaint under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, if any, shall be refunded to the State, forthwith and the State will do needful for the same.

12.5 Rule is made absolute accordingly.

Direct service is permitted.

(SANDEEP N. BHATT,J) M.H. DAVE