

2023 SCC OnLine Guj 2444

In the High Court of Gujarat at Ahmedabad  
(BEFORE SAMIR J. DAVE, J.)

Manojkumar Ganeshchand Chaudhary

*Versus*

State of Gujarat

R/Special Criminal Application No. 8715 of 2023

Decided on August 1, 2023

Advocates who appeared in this case :

Mr. Jeet J. Bhatt (6154) for the Applicant(s) No. 1 for the Respondent(s) No. 2

Mr. Chintan Dave, App for the Respondent(s) No. 1

The Order of the Court was delivered by

SAMIR J. DAVE, J.:— Rule. Learned APP waives service of notice of Rule on behalf of respondent-State.

2. By way of this petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (for short, "the Cr. P.C."), the petitioner has prayed to quash and set aside the FIR being CR No. 11191046230111 of 2023 registered with Airport Police Station, District : Ahmedabad City for the offences punishable under Sections 376(2) (n), 377, 354A, 328, 506(1), 294 of the Penal Code, 1860 and under Sections 3(1)(w)(1), 3(2)(5), 3(2)(5-A) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as well as all other consequential proceedings.

3. Learned advocate Mr. Jeet J. Bhatt appearing for the petitioner submitted that the relation between the petitioner and the respondent were consensual as she used to come to the apartment of the petitioner in the night and leave in the morning. Learned advocate would submit that the respondent admitted that she had no cordial relation with her husband. Therefore also, this is a fit case where discretion deserves to be exercised in favour of the petitioner. Learned advocate would further submit that having been in physical relationship about 4 years on the false promise of marriage is not believable therefore, the impugned FIR may be quashed and set aside by this Court.

4. Learned APP Mr. Chintan Dave for the respondent-State has resisted this on the ground that the powers under section 482 of Cr. P.C., are to be exercised by the Court sparingly and in an appropriate case at an appropriate time. Presently, the investigation in this case is going on and it is at a crucial stage, and therefore, the complaint may

not be quashed.

5. Having heard learned advocate for the petitioner and learned APP for the respondent State, this Court notices that this request is made for exercise of inherent powers under section 482 of the Cr. P.C., which are very wide amplitude. These inherent powers can be exercised either to sure the ends of justice or to prevent the abuse of process of law. However, it would dependent on the facts and circumstances of each case and no category is prescribed by the Court for the same. What is required to be considered is the nature and gravity of the offence. Heinous and serious offences, such offence of rape or dacoity or murder or the offence leading to serious injuries to the society at large etc. may not be considered for the purpose of exercise of inherent powers.

6. Ordinarily, it is expected that the category of commercial offences or disputes of mercantile and of civil nature or matrimonial disputes or disputes of partnership firms etc., the Court may consider to exercise these powers, when the parties have chosen to settle the disputes. The Court also need to record, whether the continuation of the criminal prosecution would cause extreme prejudice to the accused or would cause him injustice, if not allowed quashment, even after the parties have settled all their disputes. These powers are required to be exercised sparingly, as stated above. Since, the offence against the society, it cannot be said to be a private FIR between the parties.

7. It appears from the allegations made in the FIR that in the year 2020, the petitioner brought the respondent No. 2 in his rented house and he made her drink the thumbs up cold drink and he took video in his mobile phone, in which he was making physical relation with the respondent No. 2. Thereafter, the petitioner threatened the respondent No. 2 by showing the said video that if she does not fulfill his demand, he would send this video to her husband and her sons and also would defame you. It further appears from the bare reading of the FIR that the petitioner used to bring the respondent No. 2 in his rented house by threatening the respondent No. 2 on the basis of the said video.

8. This Court has referred to the judgment of the Supreme Court in the case of *Pramod Suryabhan Pawar v. State of Maharashtra*, 2019 LawSuit(SC) 1504. The Hon'ble Supreme Court has observed in Para No. 18, which reads as under:

*"18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself*

*must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act".*

9. At this stage, in a recent decision of the Hon'ble Supreme Court in case of *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*, (2021) 19 SCC 401, is required to be referred to. After taking into consideration the earlier decision on exercising the powers under Section 482 of the Code of Criminal Procedure including the decision of *State of Haryana v. Bhanaj Lal*, 1992 Supp (1) SCC 335. The Hon'ble Supreme Court has observed in Para No. 80, which reads as under:

"80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under section 482 of Cr. P.C. and/or under of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under section 173 of Cr. P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under section 482 of Cr. P.C. and/or under section 226 of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the

- jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;
- ix) The functions of the judiciary and the police are complementary, not overlapping;
  - x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
  - xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
  - xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;
  - xiii) The power under section 482 of Cr. P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;
  - xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of *R.P. Kapur* (supra) and *Bhajan Lal* (supra), has the jurisdiction to quash the FIR/complaint;
  - xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under section 482 of Cr. P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under section 482 Cr. P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under section 438 Cr. P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under section 173 Cr. P.C., while dismissing/disposing of the quashing petition under section 482 Cr. P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under section 482 Cr. P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

10. Considering the allegations made in the impugned FIR, prima facie, the involvement of the petitioner in the alleged offence could not be ruled out. Thus, in view of the principle laid down in the aforesaid judgment and the facts and circumstances of the case, this Court does not find this to be a fit case where discretion under section 482 of Cr.

P.C. could be exercised in favour of the petitioners.

11. For the foregoing reasons, the petition is dismissed.

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