

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 10288 of 2020**

LATABEN JITESHBHAI LATHIYA

Versus

STATE OF GUJARAT

Appearance:

MR HARDIK A DAVE(3764) for the Applicant(s) No. 1

MR PAWAN A BAROT(6455) for the Respondent(s) No. 2

MS MAITHILI MEHTA APP(2) for the Respondent(s) No. 1

CORAM:HONOURABLE DR. JUSTICE A. P. THAKER**Date : 19/08/2020****ORAL ORDER**

1. The present application has been filed under Section 482 of the Criminal Procedure Code, 1973 for quashing and setting aside the FIR being C.R.No. Part-A/112100042001003 of 2020 registered before Amroli Police Station, District: Surat for the offence under Section 307 of the Indian Penal Code.

2. Heard Mr.Hardik Dave, learned advocate for the applicant, Ms.Maithili Mehta, learned Additional Public Prosecutor for respondent No.1 – State and Mr.Pawan Barot, learned advocate for respondent No.2 through Video Conferencing.

3. Mr.Hardik Dave, learned advocate for the applicant has submitted that the FIR has been lodged against the applicant, who is a lady, for attempting to murder of her own two children. He has submitted that on reading of the FIR, it would reflect that under frustration, the applicant has administered the poisonous substance to her two children as well as she herself has consumed the said substance and wanted to commit suicide. He has submitted that an amicable settlement has been arrived at between the present applicant and respondent No.2 i.e. husband and wife, there was a family dispute between them and due to that under frustration, the applicant has committed the alleged crime. He has submitted that as the complainant himself has filed an affidavit, the request of quashing the FIR may be allowed in the interest of justice.

3.1 Mr.Hardik Dave, learned advocate for the applicant has relied upon the following decisions.

1. *The State of Madhya Pradesh Vs. Laxmi Narayan and others, AIR 2019 SC 1296;*
2. *Safirbhai Musabhai Mover Vs. State of Gujarat dated 02.03.2020 rendered in Criminal Misc. Application No.4553 of 2020;*
3. *Akbarhusen Ahemadhusen Sheikh Vs. State of Gujarat dated 07.03.2018 rendered in Criminal Misc. Application No.5199 of 2018;*
4. *Abidshah Ahemadshah Sai and others Vs. State of Gujarat dated 29.06.2020 rendered in Criminal Misc. Application No.8112 of 2020;*

5. *Kapil Kanjibhai Vaja Vs. State of Gujarat dated 24.06.2020 rendered in Special Criminal Application No.2659 of 2020;*
6. *Alpesh Alias Appu Kanjibhai Bambhaniya Vs. State of Gujarat dated 04.03.2020 rendered in Criminal Misc. Application No.4755 of 2020;*
7. *Shravansing Bhursing Vaghela Vs. State of Gujarat dated 07.08.2020 rendered in Criminal Misc. Application No.10046 of 2020;*
8. *Dipak @ Dilip Shiavabhai Chavada Vs. State of Gujarat dated 06.08.2020 rendered in Criminal Misc. Application No.9805 of 2020;*

4. Mr.Pawan Barot, learned advocate for respondent No.2 has supported the version of the applicant and has stated that the complainant has no objection if the present application is allowed and the FIR filed against the applicant be quashed and set aside. He has submitted that earlier there was dispute between the applicant and respondent No.2 and now, the said dispute has been settled between them and, therefore, the present application may be allowed.

5. Ms.Maithili Mehta, learned Additional Public Prosecutor for respondent No.1 – State has submitted that the offence under Section 307 of the Indian Penal Code is against the society at large and, therefore, even if the settlement has been arrived at between the accused and the complainant, the FIR may not be quashed. She has submitted that she has received the instructions from the concerned police personnel that there was settlement between the parties and the

incident has happened due to severe frustration on the part of the applicant and she was not getting anything from the complainant due to that fact, she has tried to commit suicide and also administered poisonous substance to her two minor daughter. She has further submitted that if the Court comes to the conclusion that the application is required to be allowed, then, in that case, considering the narration and the mental state of the applicant that as she has no income and her husband was not paying any heed to her and due to that, under frustration, she has committed the alleged offence, the applicant may be advised to join the Suman Mahila Gruh Udyog, Shanti Bhavan, Opposite Rander Road, Behind Navyug Arts College, Surat for her livelihood.

5.1 Ms.Maithili Mehta, learned Additional Public Prosecutor for respondent No.1 – State has relied upon the decision of the Apex Court in the case of ***State of Madhya Pradesh Vs. Laxmi Narayan and others*** reported in ***AIR 2019 SC 1296 = (2019) 5 SCC 688***.

6. Mr.Hardik Dave, learned advocate for the applicant has conceded that the applicant is ready to work in the said Gruh Udyog for livelihood as, now, there is divorced between the parties.

7. It is settled law that for considering the petition under Section 482 of the Code, it is necessary to consider as to whether the allegations in the complaint *prima facie* make out a case or not and the Court is not to scrutinize the allegations for the purpose of deciding whether such

allegations are likely to be upheld in trial. It is also well settled that though the High Court possesses inherent powers under Section 482 of the Code, these powers are meant to do real and substantial justice, for the administration of which alone it exists or to prevent abuse of the process of the court. The Supreme Court, time and again, has observed that extraordinary power should be exercised sparingly and with great care and caution. The High Court would be justified in exercising the said power when it is imperative to exercise the same in order to prevent injustice.

8. The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code.

9. A Court exercising its inherent jurisdiction must examine if on their face, the averments made in the complaint constitute the ingredients necessary for the offence.

10. Having considered the submissions made on behalf of both the sides and decisions cited at the Bar and considering the factual aspects of the case, it emerges that at the time of alleged incident, the applicant along with her two minor daughter was residing separately from the complainant and due to severe frustration on the part of the applicant, she has tried to commit suicide and administer the poisonous substance to her two children. It also appears that there was family dispute between the applicant and respondent No.2 as husband and wife. Thus, in this peculiar facts, the FIR came to be lodged by the husband against his wife.

11. Now, the affidavit has been filed by the original complainant – husband, which reads as under:-

“I say and submit that as due to intervention of the respected members of the society and family mutual understanding and agreement is arrived between me and Original Accused / Applicant in the above said F.I.R. i.e. LATABEN JITESHBHAI LATHIYA and now I don't have any grievance with her.

I further state that as such now I intend that I have no objection if the F.I.R. is quashed filed against LATABEN JITESHBHAI LATHIYA i.e. Applicant / Accused.”

12. Now, on reading the FIR and other documents produced on record, it appears that the amicable settlement has been arrived at between the parties and as per the police report, there is genuine settlement between the parties. Under these circumstances, when there is family dispute between the parties, there is likelihood that even if the trial is insisted upon, then, the prosecution will not able to prove the case

against the applicant and it will nothing but a futile exercise in vain.

13. The Apex Court in the case of **Laxmi Narayan** (supra) had an occasion to consider the issue as to whether an FIR lodged for the offence under Sections 307 and 34 of the Indian Penal Code could be quashed on the basis of the settlement between the parties. While considering the said issue, the Apex Court has observed in para-13 as under:-

“13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

(i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the noncompoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

(ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

(iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

(iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC

and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves.

However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/ charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

(v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of noncompoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/ compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

14. Now, considering the factual aspects of the case, on account of family dispute and due to frustration prevailing upon the applicant, she has committed the alleged offence. Further, in view of the settlement between the parties, there is no chance of any conviction and, therefore, the present application is required to be allowed. At this juncture, it is

pertinent to note that under anxiety for the welfare of the applicant, learned Additional Public Prosecutor has made a suggestion that the applicant may avail the benefit under the Mahila Gruh Udyog for her livelihood. In view of the suggestion made by learned Additional Public Prosecutor, for betterment of the applicant, some observation is required to be made in the order, for purpose of end of justice.

15. In the result, the application is allowed. The FIR being C.R.No. Part-A/112100042001003 of 2020 registered before Amroli Police Station, District: Surat for the offence under Section 307 of the Indian Penal Code as well as all consequential proceedings thereof are hereby quashed and set aside.

16. It is hereby observed that if the applicant desires to avail the benefit under the Mahila Gruh Udyog, she may engage herself with the Mahila Gruh Udyog (*Suman Mahila Gruh Udyog, Shanti Bhavan, Opposite Rander Road, Behind Navyug Arts College, Surat*) at her discretion.

17. Let the copy of this order be sent to the concerned Trial Court, concerned Police Station and Suman Mahila Gruh Udyog, Shanti Bhavan, Opposite Rander Road, Behind Navyug Arts College, Surat.

18. Registry is directed to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode.

(A. P. THAKER, J)

