

**GUJARAT HIGH COURT****Before : J. C. Doshi, J.****R/Special Criminal Application (Quashing) No. 14336 of 2023****Decided on : 06-11-2023**

RAJESHBHAI KURBANBHAI HATHILA — Appellant

Vs.

STATE OF GUJARAT — Respondent

**Sections, Acts, Rules, and Articles Mentioned:**

1. Section 482 of the Code of Criminal Procedure (CrPC)
2. Sections 306, 498A, and 114 of the Indian Penal Code (IPC)
3. Article 226 and 227 of the Constitution of India

**Subject of the Judgement:**

The application for quashing of FIR registered under Sections 306, 498A, and 114 of IPC, based on an amicable settlement between the original complainant, relatives of the deceased, and the accused.

**Headnotes**

**Quashing of FIR – Compromise Between Parties:** Application for quashing FIR. Settlement between original complainant, relatives of the deceased, and accused, leading to withdrawal of allegations. [Para 1, 3]

**Jurisprudence on Quashing Proceedings:** Reference to judicial precedents for quashing proceedings in private disputes after settlement, even in cases of non-compoundable offences. [Para 4]

**Objection to Quashing – Seriousness of Crime:** Learned APP objected, citing the seriousness of offences under Section 306 as crimes against society, suggesting the need for trial. [Para 5]

**Legal Analysis of Instigation in Suicide:** Definition and analysis of 'instigation' under Section 306 of IPC, with a finding of lack of instigation in the FIR. [Para 7-9]

**Settlement Impact and Legal Precedents:** The settlement was noted as voluntary, with references to legal precedents on accepting compromises in personal disputes. [Para 11-12]

**Exercising Inherent Powers for Justice:** Application of inherent powers to quash FIR to prevent the abuse of process and secure justice. [Para 13]

**Conclusion – Quashing of FIR and Release of Accused:** Quashing FIR and all consequential proceedings, directing the release of the accused if not required for other cases. [Para 14-15]

**Referred Cases with Citations:**

Chitresh Kumar Chopra vs. State of NCT of Delhi [2009 (16) SCC 605]

B S Joshi & Ors. vs. State of Haryana [(2003) 4 SCC 675]

Daxaben vs. State of Gujarat [AIR 2022 SC 3530]

Ramesh Kumar vs. State of Chhattisgarh [(2001) 9 SCC 618]

Madan Mohan Abbot vs. State of Punjab [(2008) 4 SCC 582]

State of Haryana & Ors. vs. Bhajanlal & Ors. [1992 Suppl. 1 SCC 2020]

Prabhatbhai Aahir alias Prabhatbhai Bhimsinhbhai Karmur & Ors. vs. State of Gujarat & Ant. [(2017) 9 SCC 641]

**ORAL ORDER**

**J. C. Doshi, J.** - Learned advocate Mr. Vipul Sundesha states that he has instructions to appear on behalf of the original complainant, and thereby, seeks permission to file his Vakalatnama, which is granted. The original complainant is present in the Court and is identified by her learned advocate.

1. By this application under Section 482 of the Code of Criminal Procedure (for short "the Code"), the applicants seek quashing of the FIR registered as CR No.11821035230198 with Limkheda Police Station, Dahod for the offence punishable under Sections 306, 498A and 114 of the Indian Penal Code and further proceedings arising thereof.

2. Heard learned Advocates appearing for the respective parties.

3. Learned Advocate Mr.Sundesha appearing for org. complainant has placed on record the affidavit of the org. complainant alongwith relatives of the deceased having blood relation and would submit that considering the overall facts and circumstances of the case, complainant as well as relatives have amicably settled the dispute with the accused with the intervention of the well-wishers of head of the society as well as overall interest of the family. It is further stated that pursuant to such settlement placed on record, the complainant and the blood relatives of the deceased are not intended to proceed further in the offence alleged against the accused and they have no objection of the proceedings in question are to be quashed and set aside. It is submitted that such settlement is voluntarily, freely and without threat or pressure; but from one's own will.

4. Reliance is placed upon the case of **Chitresh Kumar Chopra Vs. State of NCT of Delhi (2009 (16) SCC 605)** and **B S Joshi & Ors. Vs. State of Haryana [(2003) 4 SCC 675]** to contend that when the compromise has been arrived at between the parties in a private dispute whereby the element of public interest is not at higher stake and parties have withdrawn the allegations and counter allegations against each other, it would be improper to decline to exercise the power of quashing on the ground that it would be permitting the parties to compound the non-compoundable offence. It is further submitted that in case where the compromise had been arrived at between the parties by which the parties have withdrawn all the claims and allegations against the accused, technicality it should not be allowed to stand

in the way of quashing the criminal proceedings as continuation of the same would be a futile exercise.

5. On the other hand, learned APP objected to quash the proceeding in view of decision in case of **Daxaben Vs. State of Gujarat, AIR 2022 SC 3530** and contended that even if the settlement has been arrived at between the parties, the case under Section 306 falls in the category of heinous and serious crime and to be treated as against the society and not against the individual. He would further submit that this is not the stage where the Court should minutely and meticulously examine the evidence on record to find out that it would be fruitless to allow the criminal proceedings and contentions raised in this petition can be decided at the stage of trial and not in the present proceedings. He would further contend that in the present case reading the FIR at face value would indicate that deceased recorded the suicide note and committed suicide and therefore proceeding of the case is required to be carried on at its logical conclusion. By making above submissions, he would urge to dismiss this petition.

6. In background of the above arguments, the staple question arises for consideration as to whether the FIR and consequential proceedings are liable to be quashed and set aside in exercise of extraordinary and inherent jurisdiction vested under Article 226 and 227 of the Constitution of India read with Section 482 of the Code.

7. In order to prove prima facie the offence under Section 306 of the IPC, the prosecution is required to show that there is some instigation on the part of the accused which led the deceased to commit suicide as no alternative is left with him except to commit suicide. The word 'instigation' is defined in IPC. In **Ramesh Kumar v State of Chhattisgarh (2001)9 SCC 618** following words as defined the instigation.

"Instigation is to goad, urge, forward, provoke, incite or encourage to do an act" To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct. created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation."

8. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or urging forward. The dictionary meaning of the word "goad" is "a thing that stimulates someone into action; provoke to action or reaction" (see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (see Oxford Advanced Learner's Dictionary, 7th Edn.). Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter.

9. In the present case, on bare reading of the FIR basic ingredients is found lacking which indicates that there was some instigation; that there was urge forward or there was a goading or provoking which led the deceased to

commit suicide. Thus, the essential ingredients of Section 498(A) and section 306 of the IPC is lacking which the prosecution is required to prove.

10. In Daxaben (supra) in paragraph 50 the Hon'ble Apex Court laid down that the offence under Section 306 of the IPC would fall in category of heinous and serious crime and are to be treated as a crime against the society. It is further observed that offence under Section 306 of the IPC cannot be quashed on the basis of the financial settlement, with the informant, surviving spouse, parents, children, guardians, care-givers or anyone else. However, in the said decision, the Hon'ble Apex Court has not examined the question whether on plain reading of the FIR discloses offence under Section 306 of the IPC.

11. Apt to be noted that pursuant to the compromise arrived at between the parties; org. complainant and relatives of the deceased have stated that they have withdrawn allegations against the accused and stated that they have no objection if the proceedings are quashed. The said affidavits of the org. complainant and other relatives of the deceased exposes that the settlement is voluntary; without force or coerce and without monetary benefit. It further exposes situation whereby in light of observations made in Daxaben (supra) this Court has decided the case on its own merits.

12. What more appears that the complainant and relatives of the deceased has taken back the allegations against the accused. In that circumstances, criminal case against the accused become non-effective. At this juncture, I may refer to the judgment of **Madan Mohan Abbot vs. State of Punjab [2008] 4 SCC 582 6**. Observations in paragraph 6 is relevant which reads thus:

"[6] We need to emphasis that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and benefit of the technicalities of the law".

13. Issue is no more res integra that inherent power could be exercised by the High Court to set aside the FIR to prevent the abuse of process of law and to otherwise secure the ends of justice. Thus, in peculiar facts and circumstances of the case, this Court is of the opinion that there is a minimal chance that witnesses would come forward to support the case of prosecution to secure the conviction of the accused. In fact, there is a remote or no chance or desolate chance for the conviction and therefore while referring the ratio laid down in State of **Haryana & Ors. Vs. Bhajanlal & Ors., [1992 Suppl. 1 SCC 2020]** and **Prabhatbhai Aahir alias Prabhatbhai Bhimsinhbhai Karmur & Ors. vs. State of Gujarat & Ant., [(2017) 9 SCC 641]** this Court is inclined to quash the FIR.

14. This Court is quite conscious that offence of allegation of committing suicide is crime but considering peculiar facts of the case and bare reading of FIR indicates that it is well designed FIR to settle personal score.

15. In the result, the application is allowed. The impugned complaint being FIR registered as CR No.11821035230198 with Limkheda Police Station, Dahod as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside qua the applicants herein. Rule is made absolute. Direct service is permitted. If the applicants are in jail, the jail

authority concerned is directed to release the applicants forthwith, if not required in connection with any other case.

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