

Gujarat High Court

Shailesh Kalidas Bharwad vs State Of Gujarat on 27 June, 2023

Bench: Sandeep N. Bhatt

R/CR.MA/15849/2018

ORDER DATED: 27/06/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 15849 of 2018

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SHAILESH KALIDAS BHARWAD

Versus

STATE OF GUJARAT & 1 other(s)

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Appearance:

MR SI NANAVALI, SENIOR ADVOCATE WITH MS ANUJA S

NANAVALI(5229) for the Applicant(s) No. 1

NOTICE SERVED for the Respondent(s) No. 2

MR SOAHAM JOSHI, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 27/06/2023

ORAL ORDER

1. This application is filed under Section 482 of the Code of Criminal Procedure, 1973 ('the Code' for short) praying for quashing and setting aside the FIR being II-C.R.No.3168 of 2016 registered with Ramol Police Station, Ahmedabad for the offences punishable under Sections 323, 294(b), 506(2) and 114 of the Indian Penal Code ('IPC' for short) and Section 135(1) of the Gujarat Police Act.

2. The brief facts leading to filing of this application are such that the respondent no.2 is the neighbour of the applicant herein and they had an R/CR.MA/15849/2018 ORDER DATED: 27/06/2023 ongoing dispute over the road adjoining their house between them; that on 8.30 p.m., on 11.9.2016, when the respondent no.2 was going to fuel station, the applicant came in fortuner car and stopped the respondent no.2 and started abusing him and when he was stopped by respondent no.2 for not abusing him, the applicant started beating the respondent no.2; that two unknown persons came down from the car with wooden sticks and beat the respondent no.2 twice/thrice on his head and threatened him that the applicant owns a pistol and if the respondent no.2 quarrels with the applicant over the way adjoining their houses, then the applicant would kill the respondent no.2; it is alleged that when the two unknown persons along with the applicant started beating the respondent no.2, the respondent no.2 started shouting and resultantly, the applicant herein and the two unknown persons fled away from the place; that in the meanwhile a friend of respondent no.2-Prakashbhai came to the place of incident and he was taken to hospital for treatment, therefore, the impugned FIR is filed, which is sought to be quashed by way of this application.

R/CR.MA/15849/2018 ORDER DATED: 27/06/2023

3. Heard learned senior advocate Mr.S.I.Nanavati for learned advocate Ms.Anuja Nanavati for the applicant, learned APP Mr.Joshi for the respondent no.1- state. Though served, none appears for respondent no.2- complainant.

3.1 Learned senior advocate Mr.Nanavati submits that the chargesheet is filed pursuant to the impugned FIR and thereafter it culminated into criminal case and this application is filed after filing of the chargesheet. He submits that from the bare reading of the impugned FIR, it transpires that the same is filed with a malafide intention as the civil dispute pending between the present applicant and Lalbhai Revabbhai Bharwad who happens to be the cousin brother of the present complainant being Civil Suit No.1580 of 2016, which was dismissed for want of prosecution during the pendency of this application by the learned trial Court. He submits that, in this background, there are five FIR's including the present one involving the present applicant and the complainants' therein happen to be security guard, driver, cousin brother etc. of said Lalbhai Revabbhai Bharwad. Learned senior advocate has drawn my attention towards R/CR.MA/15849/2018 ORDER DATED: 27/06/2023 the fact that from the statement of the persons Hakimali Imamali Saiyed and Majid s/o Mehboobmiya Rasulmiya recorded by the police, it transpires that both of them have visited the place of so called incident after the incident was over and they have not actually seen the incident being occurred. Therefore, he submitted that the present complainant has filed this complaint with a view to pressurize and harass the present applicant by giving criminal colour to civil dispute. He, therefore, submitted that in view of the judgment in the case of State of Haryana V/s Bhajan Lal reported in AIR 1992 SC 604, this Court should exercise the inherent powers under Section 482 of the Code and quash the impugned FIR and the consequent proceedings by allowing this application as the impugned FIR is nothing but abuse of process of law.

4. Per contra, learned APP Mr.Joshi for the respondent-state has submitted that on bare reading of the FIR, it transpires that the ingredients of alleged offences under Sections 323, 294(b) and 506(2) of IPC are attracted. He also submitted that since the chargesheet is filed pursuant to the said FIR, it is not R/CR.MA/15849/2018 ORDER DATED: 27/06/2023 appropriate to interfere at this stage as now the trial is also likely to proceed further. He further submits that this Court should exercise the powers under Section 482 of the Code very sparingly and prays to dismiss this application.

5. It is relevant to note that though the notice is served, the respondent no.2 has not appeared in person nor through any learned advocate to contest this application.

6. I have considered the rival submissions, and also perused the material on record, more particularly, the impugned FIR and some papers of chargesheet.

7. At the outset, the provisions invoked in the impugned FIR read as under:

"323. Punishment for voluntarily causing hurt.--Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may

extend to one thousand rupees, or with both.

R/CR.MA/15849/2018 ORDER DATED: 27/06/2023 "294. Obscene acts and songs.--Whoever, to the annoyance of others,

(a) xxx

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

506. Punishment for criminal intimidation - Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc. - And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

8. Now, perusing the material placed on record, it transpires that there was a dispute going on pertaining to some road adjoining their house between the applicant and cousin brother of the complainant at the relevant R/CR.MA/15849/2018 ORDER DATED: 27/06/2023 point of time; that thereafter the complainant and other persons who are near relatives of Lalbhai Bharwad have filed various complaints within that particular time span before different police stations only with a view to harass and pressurize the applicant; and by that the civil proceedings are given colour of criminal nature by filing such complaints as the incident described in the FIR prima facie does not constitute any offence and also not believable as no material is available on the record to justify the said incident; moreover on perusal of the the statements of the witnesses who have not seen incident and recorded by the police also does not support the occurrence of the incident narrated in the impugned FIR, that the ingredients of sections invoked in the impugned FIR are not prima facie made out and therefore it can be said that it is nothing but a gross abuse of process of law just to harass the applicant with a view to settle the personal vendetta.

9. Further, it will also be fruitful to mention the judgment of Hon'ble Supreme Court in the case of State of Haryana V/s Bhajan Lal reported in AIR 1992 SC 604, wherein the Hon'ble Supreme Court has observed R/CR.MA/15849/2018 ORDER DATED: 27/06/2023 thus -

"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, 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 R/CR.MA/15849/2018 ORDER DATED: 27/06/2023 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. (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 R/CR.MA/15849/2018 ORDER DATED: 27/06/2023 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. 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 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;] R/CR.MA/15849/2018 ORDER DATED: 27/06/2023 [(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."

11. Normally, this Court would be reluctant in allowing such application after filing of the chargesheet but considering the totality of the facts and peculiar circumstances of the case and in view of above settled position of law, it transpires that continuation of further proceedings pursuant to the said FIR will cause greater hardships to the applicant and no fruitful purpose would be served if such further proceedings are allowed to be R/CR.MA/15849/2018 ORDER DATED: 27/06/2023 continued. The Court must ensure that criminal prosecution is not used as instrument of harassment or for seeking private vendetta or with ulterior motive to pressurise accused or to settle the score.

12. Resultantly, this application is allowed. The F.I.R. registered as C.R.No.II-3168 of 2016 with Ramol Police Station, Ahmedabad and all consequential proceedings arising therefrom are hereby quashed and set aside. Direct service is permitted.

(SANDEEP N. BHATT,J) SRILATHA