
Prahladbhai Maganbhai Parmar Versus Vs State of Gujarat & Anr.

Special Criminal (Quashing) Application No. 7629 of 2019

Court: Gujarat High Court

Date of Decision: Jan. 6, 2025

Acts Referred:

Code of Criminal Procedure, 1973 " Section 155(2), 156(1), 482#Indian Penal Code, 1860
" Section 153A, 295

Hon'ble Judges: Divyesh A. Joshi, J

Bench: Single Bench

Advocate: Haribhai J Patel, Manan Mehta

Final Decision: Dismissed

Judgement

Divyesh A. Joshi, J

1. By filing present petition under Section 482 of the Criminal Procedure Code, 1973 ("CrPC", for short), the applicant has prayed for quashing

and setting aside the impugned FIR being C.R. No.I-39/2019 registered with Danta Police Station, Banaskantha for the offences under Sections 153A

and 295 of the Indian Penal Code ("IPC", for short) and subsequent proceedings arising out of the impugned order.

2. The gist of the FIR is as under,

The accused has circulated one derogatory message in one WhatsApp Group viz., "Super News", creating a rift between two communities and

also hurting feelings of a particular community.

3. Heard learned advocate, Mr. Haribhai Patel for the applicant and learned APP Mr. Manan Mehta.

4. Learned advocate, Mr. Patel submitted that the applicant is not directly or indirectly connected with the alleged commission of crime. He submitted

that in fact, the respondent no.2 herein and his friends made derogative words against the applicant and his community, which resulted into registration

of the FIR against the complainant by the applicant and as a counter-blast and with a sole intent to get out from the clutches of rigors of criminal trial,

the impugned FIR has been lodged just to settle personal score. He submitted that in fact, the applicant has forwarded the so-called message in one

WhatsApp group and subsequently, those group members have forwarded the said message to different WhatsApp groups, however on account of

circulation of said message, no untoward incident had occurred, therefore, the prosecution launched against the applicant may be quashed and set

aside, otherwise for no fault on his part, the applicant has to face the trial.

5. At this stage, learned advocate has referred to the provision of Sections 153A and 295 of the IPC and submitted that Section 295 of the IPC

provides for "injuring or defiling place of worship with intent to insult the religion of any class" and bare perusal of the said provision, it is found

out that not a single derogative word is to be made on place of worship, therefore, basic and essential ingredients of the alleged Section 295 of the IPC

are missing because here in this case on hand, only message was prepared and forwarded in the WhatsApp group and admittedly, there is no

involvement and/or mention about the place of worship, therefore at the time of registration of impugned FIR, invocation of Section 295 of the IPC is

wrongly applied by the complainant as well as police authority. He further submitted that so far as Section 153A of the IPC is concerned, it is an

admitted position of fact that after circulation of the said message within a particular territory, no untoward incident has occurred between two

religion, therefore, it can safely be said that with sole intent to settle the personal dispute, the impugned FIR has been filed, which is a counter-blast to

the FIR filed by the applicant and admittedly, the basis and essential ingredients of Section 153A of the IPC are missing. He further submitted that

reading the provision of Sections 153A and 295 of the IPC together, it can safely be said that basic and essential ingredients of Section 153A of the

IPC are missing and, therefore, the prosecution launched against the present applicant is required to be quashed and set aside.

6. Learned advocate, at this stage, has placed reliance upon

(1) the judgment of the Hon'ble Supreme Court in case of Bilal Ahmed Kaloo Vs. State of A.P., reported in (1997) 7 SCC 431;

(2) the judgment of the Hon'ble Supreme Court in case of Balwant Singh Vs. State of Punjab, reported in 1995 (3) SCC 214;

7. Referring to the aforesaid decisions, learned advocate submitted that the case of the applicant is squarely covered by those decisions, therefore, the

present petition may be allowed and the impugned FIR may be quashed and set aside.

8. On the other hand, learned APP Mr. Mehta appearing for the respondent "State of Gujarat has opposed the present application with a

vehemence and submitted that bare reading of the contents of the FIR disclose the commission of crime by the accused and, hence, discretion may

not be exercised in favour of the accused person, who is involved in the commission of crime. He submitted that bare perusal of the allegations leveled

in the impugned FIR clearly goes on to show that the basic and essential ingredients of the alleged offences are clearly satisfied. He, however,

submitted that he could not be able to read the said message circulated by the accused against the community of the complainant in an open court

because the language employed is very derogatory and against the members of particular community. He submitted that immediately after registration

of the FIR, the investigation was put into motion till the stay granted by this Court while passing an order dated 25.07.2019, however during that period,

the concerned IO has recorded the statements of witnesses and also collected material against the applicant, which clearly demonstrate that basic and

essential ingredients of the alleged offences are found out because with a sole intent to create disharmony in the society, certain words were being

used in the message and, thereafter, it had been circulated in WhatsApp group and thus prima facie involvement of the applicant is found out in the

commission of offence. He further submitted that so far as the contention raised by learned advocate for the applicant with regard to invocation of

Section 295 of the IPC is concerned, yet the investigation is not concluded and the said aspect will be taken care by the concerned IO at the time of

filing of chargesheet. It is, therefore, urged that the petition may be rejected.

9. No other and further submissions are canvassed by learned advocates for the parties.

10. Having heard learned advocates appearing for the parties and having gone through the material and evidence available on record, it is found out

that the impugned FIR is filed alleging inter alia with regard to circulation of one derogatory message in one WhatsApp group creating a rift between

two communities and also hurting feelings of a particular community and on filing of the impugned FIR, the applicant has have approached this Court

by filing present application and obtained stay against further investigation, as a result of which, investigation could not be proceeded further.

11. However before considering the facts of the case, I would like to rely upon the decision of the Hon'ble Supreme Court in case of M/s

Neeharika Infrastructure Pvt. Ltd Vs. State Maharashtra & Ors., reported in 2021 (19) SCC 401, wherein a three-judge Bench of the Hon'ble

Supreme Court has analyzed the precedent of the Hon'ble Supreme Court and culled out the relevant principles that govern the law on quashing

of an FIR Section 482 of the CrPC. Over and above that, the scope and ambiguity of powers to be exercised under Section 482 of the CrPC has been

elaborately dealt with and considered by this Court. The relevant observations made in the said decision are as under,

“10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad

(supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the

Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not

permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the

context of the death penalty, as explained previously by this Court);

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 and a rarity 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. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the

process by Section 482 Cr.P.C.

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. During or 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 Cr.P.C. is very wide, but conferment of wide power requires the court to be 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; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C.,

only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to

consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police

to investigate the allegations in the FIR.

12. At the outset, it is apt to refer the law laid down by the Hon'ble Apex Court in case of Bhajan Lal (supra). The relevant para 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 Article 226 or the inherent powers u/s 482 of the Code of

Criminal Procedure which we have extracted and reproduced above, the following categories of cases are given 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 formula 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 F.I.R. do not disclose a cognizable

offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the

purview of Section 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 Section 155(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,

(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.

13. The Hon'ble Apex Court in case of R.P. Kapur (supra) has summarised some categories of cases where inherent power can and should be

exercised to quash the proceedings, which are as under,

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute

the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails

to prove the charge.

14. The Apex Court has, in the case of Jagmohan Singh Vs. Vimlesh Kumar & Ors., rendered in Civil Appeal No.741 of 2022, decided on 5.5.2022,

observed as under :

... At this stage, we are not inclined to look into the correctness of the allegations made in the FIR. Ex- facie, the allegations in the FIR

disclose an offence. Whether the persons named in the FIR have committed the offence or not, has to be decided upon trial, in the criminal

proceedings.

The Court interferes in criminal proceedings, in exercise of the power under Section 482 the Cr.P.C., in rare and exceptional cases, to give

effect to the provisions of the Cr.P.C. or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

While exercising jurisdiction under Section 482 the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether

there is reliable evidence or not. The jurisdiction has to be exercised sparingly, carefully and with caution only when such exercise is

justified by the specific provisions of Section 482 the Cr.P.C. itself.

15. Now if the facts of the present case are examined, in that event, it would be found that the original complainant has made specific allegations in

the FIR with regard to circulation of one derogatory message in WhatsApp Group, which was further circulated in different WhatsApp group and

thereby attempt is being made to create a rift between two communities and hurt feelings of a particular community. However as stated above, on

registration of the impugned FIR, the present quashing petition has been preferred, wherein at the time of issuance of notice, the Coordinate Bench of

this Court has granted stay against further investigation, as a result of which, further investigation could not be carried out. However in the facts of the

case on hand, as stated above, the allegations leveled in the FIR disclose the commission of offence. Therefore, it would not be appropriate to

interfere at the early stage of investigation. In my view, when cognizable offence is disclosed, the investigation by the Agency shall not be scuttled,

except in a rarest of rare case and in exceptional case. The applicant could not able to bring his case within the four corners of rarest of rare case,

that warrants any interference at the instance of this Court exercising extraordinary power conferred under Section 482 of the Cr.P.C. Over and

above that, as stated above, after registration of the FIR and before granting stay, the concerned IO had carried out investigation and also recorded

the statements of witnesses. I have considered the said material including the statements of the witnesses and found the prima facie involvement of

the applicant in the commission of crime.

16. Therefore considering the facts of the case and also applying ratio laid down by the Hon'ble Supreme Court in the aforesaid decisions as

referred to hereinabove to the case on hand, there are sufficient material, prima facie available to proceed further in the trial. At this stage on bare

reading of FIR, it cannot be ascertained as to whether the applicant is involved in the commission of crime or not. This aspect can be assessed,

examined and decided during trial.

17. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional

circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence

while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a

prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.

18. What appears from above discussion, sufficient material exists to send the accused for trial. Whole reading of FIR, disclose ingredients of offence.

The applicant has failed to point out that FIR is mala fide, frivolous or vexatious. Thus, no justification is called to interfere.

19. I have also gone through the decisions relied upon by the learned advocate for the applicant. There cannot be any dispute with regard to the ratio

laid down in the same. However, in the facts and circumstances of the case on hand and this being discretionary relief, which requires to be granted

judiciously, the said decisions would be of no help to the present applicants at this juncture.

20. However, so far as the submission canvassed by learned advocate for the applicant with regard to invocation of Section 295 of the IPC is

concerned, it is required to be noted that yet the investigation is not concluded and on the strength of the evidence, that may be collected by the IO on

conclusion of the investigation, the concerned IO may file appropriate report to that regard specifically mention that no offence under Section 295 of

the IPC is made out, if that is so. But at this stage, before conclusion of investigation, the said aspect cannot be decided.

21. In view of the aforesaid, the present petition is bereft of any merits and thereby requires to be rejected and the same is accordingly rejected.

Notice is discharged. Interim relief granted earlier is vacated.