

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 9779 of 2022**

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MAHENDRASINH HIMMATSINH CHAUHAN
Versus
STATE OF GUJARAT

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Appearance:

MR KIRTIDEV R DAVE(3267) for the Applicant(s) No. 1

MR RAHUL K DAVE(3978) for the Applicant(s) No. 1
for the Respondent(s) No. 2,3

MR PRANAV TRIVEDI, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 22/06/2022**ORAL ORDER**

[1] By way of this Criminal Miscellaneous Application under Section 482 of The Criminal Procedure Code, 1973, the applicant – original accused seeks to quash the impugned F.I.R. being C.R. No.11206079200842 of 2020 dated 5th October 2020 registered at Vadol Police Station, District : Mahesana for the offences punishable under Sections 308, 277, 279 and 114 of the Indian Penal Code and Section 5 of the Environment (Protection) Act and Section 24 of The Water (Prevention and Control of Pollution) Act.

[2] The case of the prosecution as per the F.I.R. can be stated as under:

[2.1] Upon receipt of private information, the police authorities have raided the land bearing survey No.128 of village : Bamnava, wherein

one Tanker bearing Registration No.GJ-06-X-7290 was found along with two persons namely Hargovanbhai Varvabhai Bhangi and Hathisinh Laxmansinh Chauhan. The Tanker was brought from the factory situated at Ranasan G.I.D.C. owned by Mahendrasinh Himmatsinh Chauhan i.e. the applicant. At the time of raid, in survey No.128, a big pit was excavated in which a chemical was being dumped from the Tanker. It was further found that an underground pipeline was put up in that pit and in the other corner of land bearing survey No.128, there was an another big pit excavated to the extent of 60/40 feet and 10 feet depth, wherein also, the said chemical was dumped to the level of 3 feet. On inquiry, it was revealed that the said Tanker was brought from the factory of the applicant situated at Ranasan G.I.D.C. and asked to dump in the open land of excavating the pits. Thus, the aforesaid F.I.R. came to be registered.

[3] The Investigating Agency, after having conducted the investigation, filed chargesheet before the competent Court on 5th December 2020 against the present applicant as well as two other accused persons those who are caught red handed at the time of raid. It is pertinent to note that thereafter, at that time, the present applicant was shown as absconder. However, an additional chargesheet dated 24th April 2021 came to be filed against the present applicant.

[4] Feeling aggrieved and dissatisfied with the aforesaid F.I.R. as well as the chargesheet, the present applicant has approached this Court by way of this application under Section 482 of the Cr.P.C.

[5] I have heard Mr. Kirti R. Dave, learned advocate appearing for the applicant and Mr. Pranav Trivedi, learned A.P.P. appearing for the respondent – State of Gujarat.

[6] Mr. Dave, learned advocate has mainly submitted that the present applicant came to be implicated in the aforesaid F.I.R. upon relying upon the statement of co-accused. He further submitted that statement of the co-accused have no evidentiary value in the eyes of law. He further submitted that the ownership of vehicle is highly disputed i.e. Tanker bearing Registration No. GJ-06-X-7290. He further submitted that the ownership of vehicle is not established and there is nothing for being part of the chargesheet, which suggests that the said Tanker was owned by the present applicant. Mr. Dave submitted that M/s. JVM Mine Chem was registered as a partnership firm on 8th February 2013 and at that time, there were four partners in the firm and the present applicant was amongst them. He further submitted that the said firm came to be dissolved by way of Dissolution Deed dated 3rd June 2014, and thereafter, another firm with the same came to be created, wherein only two partners are there. According to Mr. Dave, the present applicant has

nothing to do with the newly created partnership firm and thereby, the present applicant cannot be implicated in the said offences.

[7] By making above submissions, Mr. Dave, learned advocate has urged this Court to quash and set aside the criminal proceedings arising out of the impugned F.I.R. being C.R. No.11206079200842 of 2020 dated 5th October 2020 registered at Vadol Police Station, District : Mahesana for the offences referred to above.

[8] *Per contra*, Mr. Pranav Trivedi, learned A.P.P. appearing for the respondent – State has vehemently opposed the present application contending that the present applicant is involved in a serious offence of damaging not only environment, but also endangering to the life of human as well as animals. Mr. Trivedi further submitted that the present applicant, from the date of lodging of the F.I.R., was absconding and thereby, separate chargesheet came to be filed against the present applicant only after he remained available for investigation. Mr. Trivedi submitted that as per the investigation and the chargesheet papers, the present applicant is connected with the crime in question and thereby, he has been rightly chargesheeted and sent for trial. Therefore, Mr. Trivedi submitted that a *prima facie* case is made out against the present applicant and therefore, the criminal proceedings may not be quashed under Section 482 of the Cr.P.C.

[9] By making above submissions, learned A.P.P. prays to dismiss the present application.

[10] Having heard the learned advocates for the respective parties and having gone through the chargesheet produced on record, in my considered opinion, the present case is a glaring example of horrifying side effects of industrial growth, wherein not only society at large is being affected, but it is prejudicial to the cattle as well. Therefore, in my view, when the industrialization is achieving its peak, then our eyes must not be closed against those errant, who, for the sake of their meager profit, manipulating with the nature and life of human.

[11] Day in day out, hazardous waste of industries being left in such a untreated manner endangering to the human and cattle life. Discharging the hazardous chemical in open land by excavating pits is having far reaching impacts. The allegation in the present case is one where a huge quantity of hazardous chemical waste was apprehended / red handed at the time when it was being actually discharged in a land by excavating a big pit.

[12] The contention raised by the present applicant such as ownership of Trailer, not existing partners of the firm, owner of the factory premises, in my view, can be raised before the Trial Court by way of

defence. The Trial Court is the Court where evidence being led and can be appreciated in details. Considering the seriousness of offence, at this stage, it would not be proper to appreciate and/or evaluate the legality and credibility of evidence collected by the Investigating Officer. I say so because in a recent pronouncement of the Hon'ble Apex Court in the case of **Neeharika Infrastructure Pvt. Ltd vs. State of Maharashtra and others reported in 2021 SCC Online SC 315**, the Hon'ble Apex Court has held thus 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 abuse 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.”

[13] It would be apt to refer to and rely upon the celebrated decision of the Hon'ble Apex Court in the case of **State of Haryana v. Bhajan Lal**, reported in **1992 Supp. 1 SCC 335**, wherein the Hon'ble Apex Court has observed as under :

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very

sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

[14] Yet, in the another decision rendered by the Hon’ble Apex Court in the case of **Jagmohan Singh vs. Vimlesh Kumar and others [Criminal Appeal NO.741 of 2022 decided on 5th May 2022]**, it is held as follows:

“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 of 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 of 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 of the Cr.P.C. itself.”

[15] Keeping in mind the aforesaid decisions of the Hon’ble Apex Court and when the F.I.R. discloses commission of cognizable offence and later

on, when the Investigating Agency has filed a chargesheet against the accused, in that event, it would not be proper for this Court to exercise its power under Section 482 of the Cr.P.C. by embarking upon the inquiry with regard to the credibility or trustworthiness of evidence collected by the Investigating Agency.

[16] For the foregoing reasons, the present application does not require any interference at the instance of this Court in exercise of its extraordinary jurisdiction under Section 482 of the Cr.P.C.

[17] In the result, the present application fails and is hereby rejected accordingly.

CHANDRESH

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(NIRAL R. MEHTA,J)

THE HIGH COURT
OF GUJARAT

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