

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 19332 of 2013**

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GELABHAI MERUBHAI AAL (RABARI)
Versus
STATE OF GUJARAT & 1 other(s)

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Appearance:

MR EE SAIYED(725) for the Applicant(s) No. 1
MR SIKANDER SAIYED(3458) for the Applicant(s) No. 1
MR SM CHUDASAMA(3712) for the Respondent(s) No. 2
MS ASMITA PATEL, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

**Date : 28/04/2023
ORAL ORDER**

1. By this application, under Section 482 of the code of Criminal Procedure, 1973 the applicant seeks to invoke the inherent powers of this Court, praying for quashing of the First Information Report being, C.R. No.II-276 of 2013 registered with Nadiad Town Police Station, Kheda, for the offence punishable under Sections 504, 507 read with Section 114 of the Indian Penal Code. The complaint came to be lodged at the instance of respondent No.2.

2. Heard Mr.Sikander Saiyed, learned advocate for the applicant and Ms.Asmita Patel, learned APP for the respondent-State. Though served, none appears for respondent No.2.

3. Ms. Asmita Patel, learned APP has vehemently opposed this application and argued that the applicant has committed

serious offence, therefore, this application be dismissed.

4. Having heard the learned advocates for the respective parties and having gone through the complaint filed by the respondent No.2 which is produced at Annexure-A, it appears that the respondent No.2 is an informant, who has given a complaint against the present applicant and alleged that the complainant has paid an amount in transaction to purchase of land and subsequently after executing the sale of agreement, he paid Rs.5,00,000/- towards consideration and thereafter accused – applicant herein entered into the transaction with another man and received money from another party and inducted him in a possession of the property. As the said facts came to the notice of the complainant, he asked to the applicant to return his money to which, the applicant denied to return the money and talked on the mobile phone to the respondent No.2 and gave threat. Except this, no allegation is levelled against the present applicant.

5. In the aforesaid backdrop, complaint is filed It is necessary to consider whether the power conferred by the High Court under section 482 of the Code of Criminal Procedure is warranted. It is true that the powers under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be

careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage as the Hon'ble Supreme Court has decided in the case of **Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS & Anr.**, reported in **AIR 2006 SC 2872**.

6. After going through the contents of complaint, it appears that uncontroverted allegations are made in the complaint. If accepted the same, the commission of offence under Sections 507 and 504 is not made out. Even if the allegations made in the complaint are taken at its face value and accepted in its entirety, did not constitute any offence or make out the case except the conversation or talk on mobile which cannot implicate the applicant in the offence.

6.1 The alleged offence is in connection with monetary transaction. It seems civil land transaction but colour of criminal complaint is given. Even otherwise the ingredients of Sections 504 and 507 are not attracted at all. Even one more aspect is also required to be considered that the offence under Sections 504 and 507 are non-cognizable and investigation of non-cognizable offence is barred under Section 155(2) of the Code of Criminal Procedure. No Police Officer shall investigate a non-cognizable offence without the order of Magistrate having power to try such case or commit the case for trial herein no such permission or order of Magistrate is obtained by the Police Officer. Even on that count also, the case on hand is fit case to exercise power under Section 482 of the Code in light of law laid down by Hon'ble Apex Court in the case of **State of Haryana versus Bhajan Lal**, reported in **1992 Supp (1) SCC 335**.

7. In the result, this application is allowed. The Complaint/F.I.R. being C.R. No.II-276 of 2013 registered with Nadiad Town Police Station, is hereby ordered to be quashed and set aside qua the present applicant. All consequential proceedings pursuant thereto shall also stand terminated. Rule is made absolute.

(HASMUKH D. SUTHAR,J)

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