

(2011) 06 GUJ CK 0043

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No 1345 of 2011 and Special Criminal Application No 149 of 2011

Bhaniben Mahadevbhai Patel (Chaudhari) and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 13-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 114, 143, 323, 504, 506(2)

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(1)(10)

Citation : (2011) 06 GUJ CK 0043

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : Vijay H. Nangesh, for the Appellant; C.M. Shah, APP for Respondent No. 1 and Bhunesh C. Rupera, for the Respondent

Final Decision : Allowed

Judgement

M.D. Shah, J.—Cri. Misc. Appln. No. 1345 of 2011 u/s 482 of the Code of Criminal Procedure has been filed by the Petitioners-original accused for quashing of FIR registered as C.R. No. I-2 of 2011 at Bhabhar Police Station, Dist. Banaskantha. Spl. Cri. Appln. No. 149 of 2011 has been taken out by the complainant of said complaint for handing over investigation of said Crime Register Number to CBI and/or CID, Crime and/or Dy. S.P. of S.T. and S.C. Cell.

2. As both the petitions arise out of the same facts and parties thereto are also the same, they were heard together and are being decided by this common judgment.

3. The complaint in question was lodged by the complainant-Jivabhai Vahajibhai against the Petitioners-accused which was registered as C.R. No. I-2 of 2011 for the offences punishable under Sections 323, 504, 506(2), 143 and 114 of IPC and u/s 3(1)(10) of Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 at Bhabhar Police Station.

4. Heard learned advocate, Mr. Vijay N. Nagesh for the accused, learned APP, Ms. C.M. Shah for the State and learned advocate, Mr. Bhunesh C. Rupera for the original complainant.

5. It is mainly submitted by Mr. V.N. Nagesh for the Petitioners-accused that a false and frivolous complaint has been filed against the accused. It is further submitted that the complainant is in habit of making false complaint against innocent persons and thereafter seeking to compromise the matter on receipt of money. It is further submitted that the complainant has filed such complaints against the Government Officers including Mamlatdar, Taluka Development Officer and other staff. It is further submitted that even if the allegations made in the entire complaint are accepted in its entirety, then also, no prudent man would believe the same as they are not sufficient to constitute any offence alleged. It is further submitted that the complaint has been filed by the complainant to take vengeance on the accused due to political rivalry and in past also, Petitioners Nos. 1 and 2 were involved in false complaint in which they were acquitted by the court. As the complaint in question does not even remotely connect the Petitioners with the offence alleged, it is requested that the complaint may be quashed and set aside.

6. It is however submitted by learned advocate, Mr. . Bhunesh C. Rupera for the original complainant that even after filing of complaint against the accused, as the Police authorities were not taking any action, he made representation to Home Secretary, Opposition Leader of Assembly and Director General of Police for transfer of investigation. It is further submitted that when the complainant and his wife were going to Bhabar Government Hospital for treatment, two of the accused persons namely Madev Kanji Patel and Dala Hatha Thakor abused the complainant about his caste and, therefore, he filed written complaint in respect of the said incident before the Bhabhar Police Station. It is further submitted that Special Criminal ApIn. No. 317 of 2009 preferred by him before this Court for a fair investigation qua the complaints filed by the complainant and his wife was disposed of by this Court. Thereafter, the complainant sought information under the Right to Information Act and it was known that "B" summary report has been filed by the police in the Court of learned Judicial Magistrate (First Class), Deodhar, in respect of three complaints filed by him. He apprehends the same situation in the present case also and hence, it is requested that the present complaint may be handed over to any other agency. It is further submitted that as the complaint itself discloses prima facie ingredients of offence alleged against the Petitioners-accused, complaint may not be quashed.

7. Learend APP, Ms. C.M. Shah has submitted that appropriate order may be passed.

8. This Court has gone through the complaint in question and the ingredients therein. For the purpose of quashing of the complaint, what required to be seen

is whether complaint discloses the prima facie ingredients of offence or not and if it does not disclose the ingredients of the offence, complaint can be quashed.

9. It appears from the complaint that ingredients of the offences alleged against the Petitioners-accused do not appear to have been prima facie disclosed. It also appears that in earlier complaints filed against the Petitioners-accused, "B" summary report has been filed. The present complaint appears to be of similar nature. It also appears that the complainant is in habit of making false complaint against other persons. In view of the above, the present complaint is required to be quashed.

10. In view of the above, this petition is allowed. FIR registered as C.R. No. I-2 of 2011 at Bhabhar Police Station, Dist. Banaskantha and the proceedings there under is quashed and set aside. Rule is made absolute.

11. In view of the quashing of the complaint, Spl. Cri. Appln. No. 149 of 2001 for transfer of investigation of said complaint does not survive and is disposed of accordingly.