

(2011) 09 GUJ CK 0045

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 8279 of 2006 and Special Criminal Application No. 454 of 2007

Bharatbhai Mansukhlal Budhdev and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 209, 226
Penal Code, 1860 (IPC) — Section 302

Citation : (2011) 09 GUJ CK 0045

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

Bench : Single Bench

Advocate : Yogesh S. Lakhani, s 1 and 2, for the Appellant; L.R. Pujari, APP for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

M.D. Shah, J.—Cri. Misc. Appln. No. 8279 of 2006 has been filed by the original accused for quashing of FIR being C.R. No. 0320 of 2000 registered against the accused.

2. Special Criminal Application No. 454 of 2007 has been filed by the Petitioners-original accused Nos. 1 and 2 to quash and set aside the order dated 22-2-2007 passed below Ex. 210 in Sessions Case Nos. 34 of 2001, 38 of 2002, 19 of 2004 and 78 of 2004 by the learned Presiding Officer and Addl. Sessions Judge, Fast Track Court No. 7, Gondal, Camp at Jetpur, whereby the application for separating the charges against the present Petitioners from other accused was rejected.

3. As both these matters arise out of common facts they are heard together and are being decided by this common judgment.

4. Facts in brief are that on 13-12-2000 at about 11.30 to 12.00 at night, three unknown persons came in Maruti car to the office of one Devyani Dyeing Pvt.

Ltd. of which, two persons went inside the office and fired two shots on the person sitting on the chair of owner of the Company resulting into an offence punishable u/s 302 of Indian Penal Code. It was thereafter found that these three unknown persons were hired to kill owner of the Company namely, Mohanbhai but by mistake the Manager, Arvindbhai Chunibhai was killed. A complaint was lodged by the Respondent No. 2 and police started investigation. During the course of investigation, names of the Petitioners and other persons were added. All the accused were released on bail. At the end of investigation, charge sheet was filed against the Petitioners. However, around 12-10-2001, during the interrogation of one Haribhai @ Harishchandra Ramanuj, who was arrested by Delhi police in some other offence, it came to know that he conspired and connived with others in committing the offence in question. It also came on record that he was hired as a mercenary killer who had connection with a Dubai based gang. Hence, though charge sheet was filed, PI, CID Crime, Rajkot Rural, sought further investigation from the Court of learned Sessions Judge by way of application on 14-12-2004. Said application was allowed by the learned Addl. Sessions Judge and Presiding Officer, 8th Fast Track Court, vide order dated 21-12-2004 ordering further investigation u/s 173(8) of Code of Criminal Procedure and hearing of the case was stayed till submission of report. At the end of further investigation, a report was submitted by CID (Crime) on 24-2-2005 at Ex. 126 bringing out the real story. Thereafter, the Petitioners preferred application for discharge. However, same was rejected vide order dated 18-7-2006. The application Ex. 125 seeking time to approach the higher forum was also rejected. Thereafter, charge was framed on the same day at Ex. 177. According to the Petitioners, as the investigation by CID Crime did not show anything against them, they preferred Cri. Misc. Appln. No. 8279 of 2006 for quashing of the proceedings. This Court (Coram: K.S. Jhaveri,J.) vide order dated 7-11-2006 although admitted said matter granted no stay against further proceedings. It was specifically observed that final judgment against the present applicants shall not be pronounced without permission of this Court. Thereafter, an application Ex. 210 in Sessions Case Nos. 34 of 2001 with Sessions Case Nos. 38 of 2002, 14 of 2004 and 78 of 2004 was submitted by the accused Nos. 1 and 2 before the Sessions Court to separate the charge and also to quash and set aside the charge framed against all accused together at Ex. 177 sought to separate the trial after separately framing the charge. However, said application was rejected vide order dated 22-2-2007 by the learned Presiding Officer and Addl. Sessions Judge, Fast Track Court No. 7, Gondal, Camp at Jetpur. Against the said order, Special Criminal Application No. 454 of 2007 is preferred by the Petitioners. This Court (Coram: K.S. Jhaveri,J.) vide order dated 16-3-2007 issued rule and granted ad-interim relief qua stay of proceedings of Sessions Case No. 34 of 2001.

5. Heard learned Senior Advocate, Mr. Y.S. Lakhani for the Petitioners and learned APP, Mr. L.R. Pujari for the State.

6. It is submitted by learned Senior Counsel, Mr. Lakhani that pursuant to filing

of charge sheet by the local police and at the end of further investigation carried out by the CID Crime, it was revealed that present Petitioners are not involved in the present offence and no case is made out against the present Petitioners-original accused Nos. 1,2 and 3. In spite of the same, learned Public Prosecutor recommended to frame charge which is contrary to report of CID Crime. According to him, since no evidence worth the name could be said to be found against the Petitioners to sustain the charge, it is requested that the Petitioners may be discharged.

7. Learned APP, Mr. L.R. Pujari, on the other hand, suitable direction be given to the trial court before framing the charge since as per the report of CID (Crime), present Petitioners are not involved in the crime and, therefore, it was submitted that appropriate order be passed.

8. This Court has gone through order passed by the Trial Court as well as the report dated 24-2-2005 at Ex. 126 submitted by the CID Crime. It is true that in the initial investigation carried out by the local police, Petitioners were charge sheeted. However, in the subsequent further investigation carried out by the CID Crime, report at Ex. 126 was submitted by the CID(Crime) clearly indicating that the Petitioners are not involved in the offence in question. In view of this, it was necessary for the trial court to have decided on the report at Ex. 126 submitted by the CID (Crime) and then to have asked the learned Public Prosecutor to open his case u/s 226 of Code of Criminal Procedure Section 226 of Code of Criminal Procedure reads as under:

Section 226. When the accused appears or is brought before the Court in pursuance of a commitment of the case u/s 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

In view of the above, when the local police has filed charge sheet against the Petitioners and subsequently, in the investigation carried out by the CID (Crime), it was stated that the Petitioners are not at all involved in the case, the trial court ought to have decided on the report of the CID(Crime) and then u/s 226 Code of Criminal Procedure asked the Public Prosecutor to open his case. As soon as the said stage is over, Trial Court will decide on the question of framing of charge. Without a decision on the aforesaid, it would not be appropriate for this Court to decide as to whether it is a fit case for quashing of FIR or charge sheet or not. Therefore, in the opinion of this Court, charge framed by the trial court against the Petitioners-original accused Nos. 1,2 and 3 requires to be quashed and set aside together with the order dated 22-2-2007 passed by the learned Presiding Officer, Gondal, Camp at Jetpur and matter is required to be remanded to the Trial Court with certain directions to decide on the above issues.

9. Thus, order dated 22-2-2007 passed below Ex. 210 in Sessions Case Nos. 34 of 2001, 38 of 2002, 19 of 2004 and 78 of 2004 by the learned Presiding Officer and Addl. Sessions Judge, Fast Track Court No. 7, Gondal, Camp at Jetpur, along

with charge framed against the Petitioners is quashed and set aside and matter is sent back to the Trial Court with a direction to decide on the report dated 24-2-2005 at Ex. 126 submitted by the CID(Crime) and thereafter to ask the learned Public Prosecutor to open the case. Once that stage is over, the trial court will decide on the issue as to whether charge is required to be framed against the Petitioners or not. Special Criminal Application No. 454 of 2007 is accordingly allowed. Rule is made absolute to the aforesaid extent. Cri. Misc. Appln. No. 8279 of 2006 is, however, dismissed. Rule issued in Cri. Misc. Appln. No. 8279 of 2006 is discharged.

10. Office shall place a copy of this judgment in each matter.