

(2009) 05 GUJ CK 0036

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 6610 of 2004 in Criminal Miscellaneous Application No. 6610 of 2004

Bhurabhai Naranbhai Bhadarka and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2009) 05 GUJ CK 0036

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : Ashish M. Dagli, for Petitioner 1 - 3, for the Appellant; U.A. Trivedi, Assistant Public Prosecutor for Respondent 1 and Anshin H. Desai, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

A.L. Dave , J.—The petitioners have approached this Court praying for invoking powers u/s 482 of the Code of Criminal Procedure and quashing the FIR bearing CR No. I.59 of 2004 filed before the Junagadh City, #B# Division. The petitioner No. 1 is basically an agriculturist, the petitioner No. 2 is the son of petitioner No. 1, who is engaged in the business of Travel Agency, although he has indicated that he is an agriculturist and petitioner No. 3 is brother of petitioner No. 1. The FIR in question is lodged by respondent No. 2.

2. The facts of the case in brief are that, petitioner No. 1 purchased a property by a registered sale deed from the first informant in the year 1988. Subsequent to the execution and registration of the sale, requisite entries were made in the records of right after following requisite procedure and petitioner No. 1 was put in possession of the property at the time of execution of the sale deed. The complainant suddenly in the year 2004 lodged the FIR alleging that the sale deed was got executed by adopting coercive means by the petitioners. The offence was investigated and it appears that the chargesheet has been filed subsequently

by the police.

3. Learned advocate Mr. Dagli for the petitioner submitted that the complaint is false, frivolous and vexatious. In support of his arguments, he submitted that the action taken is delayed by about six years neither at the time of execution nor when the mutation entries were made in the records right after serving notice to the complainant that the complainant had ever complained about the coercive methods having been adopted by the petitioners. The complainant did not take any steps to set aside the document if it was executed under coercion by filing any suit nor he complained of such coercion when the document was presented for registration before the authority.

3. Mr. Dagli, therefore, submitted that the complaint may be termed as false and frivolous and may be quashed.

4. Learned APP appearing for the State and learned advocate Mr. Gohil for Mr. Desai for respondent No. 2 have opposed this petition.

5. This Court has examined the rival sides submission. It is clear that the document in question was executed in the year 1988. It is also clear that it is a registered document presented before the Sub-registrar, Junagadh on 16.6.1988 and registered at Sr. No. 3569. Necessary presumption / inference therefore would be that it was presented before the Sub-registrar by the vendor and there was no objection to the execution or allegation of execution of document under coercion.

6. The complaint is lodged six years thereafter on 11.2.2004 and there is no justification given by the complainant for delay except fear of the petitioners.

7. It also appears that the complainant did not choose to take civil action to protect his civil right, which would be adversely affected by the sale deed allegedly executed under coercion.

8. The above set of facts would go to show that the complaint is frivolous lodged only to cause harassment to the petitioners. There is no ring of truth in it and the complaint therefore deserves to be quashed.

9. Additionally, a civil dispute seems to have been given colour of a criminal offence. That is clear from the inaction on the part of the complainant for number of years. This can also be a valid ground for entertaining this petition.

10. The petition is accepted. The FIR being CR.I. 59 of 2004 filed before the Junagadh City, #B# Division and subsequent proceedings following the FIR would stand quashed. Rule made absolute.