

(2020) 01 GUJ CK 0015

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 9023 Of 2019

Chandrakant Chimanlal Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 114, 120B, 201, 407, 419, 420, 465, 467, 468, 471, 472, 474, 478

Citation : (2020) 01 GUJ CK 0015

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Bharat K Dave, Hardika B Dave

Final Decision : Dismissed

Judgement

A.S. Supehia, J

Perused the Note for Speaking to Minutes dated 27.12.2019 preferred by learned advocate Mr.Bharat Dave for the applicant.

It is pointed out by the learned advocate for the petitioner that inadvertently in the oral judgment dated 09.08.2019 passed by this court in Criminal Misc. Application No. 9023 of 2015 in Paragraph Nos.1 and 7, instead of words "C.R.No.I-34 of 2010" the words "C.R.No.I-34 of 2008" have been transcribed.

Accordingly, in paragraph Nos.1 and 7, where the words "C.R.No.I-34 of 2008" are transcribed, the same shall now be read as "C.R.No.I-34 of 2010". Rest of the judgment remains as it is. Note for Speaking to Minutes stands disposed of accordingly.

Date : 09/08/2019

1. The present application has been filed seeking quashing of the F.I.R. registered at Manavdar Police Station, District Junagadh, being C.R.No.I-34 of 2008 for the offence punishable under Sections 465, 467, 471, 478 and 120-B of

the Indian Penal Code, 1860 ('the IPC' for short) as well as the Criminal Case No.1897 of 2012 pending before the court of learned Chief Judicial Magistrate, Junagadh.

2. Learned advocate Mr.Bhargav Bhatt for the applicant has submitted that the case of the present applicant is squarely covered by the decision of the Apex Court in Criminal Appeal No.176 of 2015 rendered in case of Mahesh Ambalal Patel & Ors. V/s. State of Gujarat & Anr., since the applicant has specifically stated that he is a factory owner and selling threads.

3. Learned advocate Mr.Zubin Bharda is unable to controvert the aforesaid statement.

4. Learned APP Ms.Monali Bhatt has submitted that the aforesaid judgment of the Supreme Court would apply in case of the persons, who are the owners of the Spinning Factory and are selling threads.

5. I have heard the learned advocates appearing for the respective parties.

6. This Court has examined the contents of the FIR as well as the papers of the investigation, the same reveals that the case of the present applicant is squarely covered by the decision of the Apex Court since unquestionably, the applicant is running a Spinning Factory at Ahmedabad and is not directly connected with the offence. The present applicant is similarly situated to the appellants, who had approached the Supreme Court by filing Criminal Appeal No.176 of 2015. By the judgment and order dated 27.01.2015, the Apex Court has quashed the charge-sheet apropos, similarly situated accused to the applicant, by observing thus:

"It will be seen that the chargesheets against one Anil Thakkar and certain others under various Sections of the Indian Penal Code, are basically on the grounds of cheating and forgery. This is set out in the ifrst few paragraphs of the chargesheets as under:

"As per Sections 407, 420, 465, 467, 468, 471, 472, 474, 419, 201, 114, 120B of the Indian Penal Code in a way that the accused shown in Column No.2 Anil Thakkar who is not a legal commission agent or not holding any firm and is doing miscellaneous commission work and holding his forged name Anil Sharma, through the accused Satish Prabhudas shown in Column No.2 contacting the present complainant at Manavadar and giving trust to sell cotton bales to Nitin (Rajasthan), Alps (Haridwar), Gujarat Ambuja (Dalpura), etc. mills and calling for 7300 number cotton bales worth Rs.8,29,06205/-during the period January, 2008 to August, 2008 from Ashish Cotton, Manavadar through the transport company of the accused of column no.2 Mohammed Tarik Gulam Maiyuddin and not supplying the said cotton bales to the concerned mills and selling the said bales at Ahmedabad, etc., without bills illegally and paying Rs.6,37,13,067/- towards the same to the complainant and not paying Rs.1,91,93,138/-of the remaining 1400 bales to the complainant, have committed cheating with the complainant.

Giving assurance to the complainant to pay the outstanding amount and for that, the accused Anil Thakkar had given cheques of his account no.4636 of UCO Bank, Ahmedabad and the said account was closed and had used the said cheques and stamp of Shivam Traders was affixed in these cheques and the same was symbolic and forged stamp is prepared and the same was destroyed and signature was put in the cheque as A.P.Shah and there is no any person of that name and in that way, forged signature was put.

Using the cheque of the accused shown in column no.1 Bipin Tribhovandas of his bank account with A.D.C Bank, Ahmedabad, and the money are sent to the complainant from that account by cheque."

The role of the present appellants is stated thus:-

"The accused nos. 5 to 13 of column no.1 selling threads from their spinning factory to the witnesses in this case and by not issuing bill, cross cheques given by these witnesses have gone to the main accused Anil. Looking to it, abetment reveals against the main accused Anil Thakkar."

It appears to us that from a cursory reading of one paragraph attributed to the appellants herein, no case against the appellants is made out, as what is stated is that by not issuing a bill, cross cheques have been given which in turn went to the main accused Anil. These cross cheques cannot possibly be linked to Anil's alleged forgery of certain other cheques and the consequent cheating alleged. The appellants herein appear to be right in stating that they were mere middlemen but had no knowledge and had nothing to do with the alleged cheating and forgery committed by Anil"

7. In this view of the matter, the impugned F.I.R. registered at Manavdar Police Station, District Junagadh, being C.R.No.I-34 of 2008 as well as the Criminal Case No.1897 of 2012 pending before the court of Chief Judicial Magistrate, Junagadh are hereby quashed and set aside. Rule is made absolute. Direct service is permitted.