

(2017) 06 GUJ CK 0009
In the Gujarat High Court
Case No : 3426 of 2013

DHARMENDRAKUMAR @ DHARMESHKUMAR LAXMIRAM? THAKKAR Vs
STATE OF GUJARAT & ANR.

Date of Decision : 21-06-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Indian Penal Code, 1860, Section 120B,
Section 420, Section 114, Section 406, Section 507 - Punishment
of criminal conspiracy - Cheating and dishonestly inducing delivery of property -
Abettor present when offence is committed - Punishment for Criminal breach of trust -
Criminal intimidation by an anonymous communication

Citation : (2017) 06 GUJ CK 0009

Hon'ble Judges : Biren Vaishnav

Bench : Single Bench

Advocate : TEJAS P SATTA,?PRANAV TRIVEDI

Final Decision : Allowed

Judgement

1. The present application has been filed by the applicant - original accused no. 4 praying that the First Information Report being I-C.R. No. 35 of 2013 registered with Patan City "B" Division Police Station against the applicant for the offences punishable under sections 406, 420, 120B, 507 and 114 of the Indian Penal Code be quashed and set aside.

2. According to the complainant, one Chandresh Trikamlal Thakkar, in connection with business relations with the complainant cheated the complainant. The averments in the complaint indicate that the complainant was the Manager of a firm "R.R. Traders". The firm was a commission agent engaged in trading of agricultural products. According to the complainant, on 21.01.2013, the accused Chandresh Trikamlal Thakkar together with the present accused and other family members approached the complainant indicating his desire to enter into business transactions. They used to carry materials from the complainant's agency on payment of cash. Subsequently, having gained the

confidence of the complainant, several transactions were entered into between the complainant and the accused no. 1. For consideration of the transactions so entered into, the complainant was given various cheques drawn on the Nagarik Sahakari Bank by the accused no. 1 Chandresh Thakkar. Based on these cheques, it was the case of the complainant that the accused would not pay consideration of the transactions which had interse taken place between the complainant and the accused Chandresh Thakkar and therefore the present complaint of cheating was lodged. Except the fact that the name of the accused/ present

applicant appeared in the First Information Report, no specific averments were made so as to suggest that the applicant was guilty of committing offences under sections 406 and 420 of the Indian Penal Code.

3. Mr. Tejas Satta, learned advocate appearing for the applicant while arguing the present application for quashing the complaint vis-a-vis accused no. 4 argued that the present applicant - accused no. 4 has been wrongly joined as the accused in the complaint only because he happened to be a relative of the prime accused Chandresh Thakkar. No averments in the complaint have been made out to suggest that the ingredients sufficient to invoke the provisions mentioned in the complaint are satisfied against the accused no. 4 - present applicant. The First Information Report qua the present applicant therefore deserves to be quashed and set aside.

4. Mr. Pranav Trivedi, learned Additional Public Prosecutor for the State is not in a position to dispute the contention raised by the counsel for the applicant.

5. A bare reading of the complaint suggests that no specific allegations have been made against the present applicant so as to state that the applicant is guilty of committing offences under Sections 406 and 420 of the Indian Penal Code. The complaint has been lodged against the prime accused Chandresh Thakkar. The petitioner has been roped in only on the basis of his relationship with the accused no. 1 without any substance suggesting any role played by accused no. 4 - present applicant in the transactions for which accused no. 1

Chandresh Thakkar has been prima facie found to be involved.

5.1 The law in this regard is settled that where the allegations made in the F.I.R. or the complaint even if taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the F.I.R. or complaint may be quashed in exercise of powers under Article 226 or inherent powers under Section 482 of the Cr.P.C. Prima facie reading of the complaint, in the present case suggests that no case has been made out to invoke provisions of Sections 406, 420, 120B, 507, 114of the Indian Penal Code against accused no. 4 - the present applicant so as to warrant prosecution.

6. Accordingly, application is allowed. The First Information Report being I-C.R.

No. 35 of 2013 registered with Patan City "B" Division Police Station is hereby quashed and set aside qua the present applicant. Rule is made absolute.