

(2012) 02 GUJ CK 0092
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 12246 of 2011

Dhirubhai Amarnath Chawla

APPELLANT

Vs

Ratnakar D Shetty and 1

RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 195, 202, 340, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 378, 406, 408, 415, 416

Citation : (2012) 02 GUJ CK 0092

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Khushboo V. Malkan 1, for the Appellant; P.M. Vyas for Respondent 1, Mr. Hiren P. Vyas for Respondent 1, Ms Sejal H. Vyas for Respondent 1 and Mr. Dabhi, Assistant Public Prosecutor for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice M.R. Shah

1. Present Criminal Miscellaneous Application u/s 482 of the Code of Criminal Procedure has been preferred by the applicant herein-original

accused to quash and set aside the impugned FIR being M Case No. 3 of 2011 registered with Gorva Police Station, Vadodara for the offences

punishable under Sections 378, 406, 408, 415, 416, 418, 420, 424, 463, 464, 465, 468 and 471 of the Indian Penal Code. It is also further

prayed to quash and set aside the order dated 27.6.2011 passed by the learned JMFC, Municipal Court, Vadodara passed in Criminal Inquiry

Case No. 95 of 2011. The facts leading to the present Criminal Miscellaneous Application in nutshell are as under:

1.1. That the applicant herein had filed private complaint against respondent

no.1 herein in the year 2001, for the offences u/s 138 of the Negotiable Instruments Act for dishonour of the cheques total amounting to Rs. 8,50,000/-. It appears that the evidence of the complainant was

recorded and it was at the stage of completion of the evidence on behalf of the complainant, at that stage respondent no.1 herein-original

complainant had filed one private complaint in the Court of learned JMFC, Municipal Court, Vadodara being Criminal Inquiry Case No. 95 of

2011 against the applicant for the offences under Sections 378, 406, 408, 415, 416, 418, 420, 424, 463, 464, 465, 468 and 471 of the Indian

Penal Code and in the said complaint he has prayed for the following relief;

1. The complainant pray the Hon''ble Court stay the proceeding of Case/ complaints No. 7025 /2001 and 7026 of 2001 still the disposal of this complaint.

2. To try and award deterrent punishment and fine to the accused.

3. The accused may please be directed refund all the amount illegally wrongfully collected from the owner of the complainant which was a wrongful gain to the accused and wrongful loss to the complainant.

4. The accused may please be directed to hand over all the document including any cheque/s held and retained by him.

5. That also this may treat an FIR.

6. Any other relief may please be awarded in the interest of justice.

1.2. That the said complaint with the aforesaid reliefs has been filed on 22.6.2011 i.e. after a period of 10 years of initiating proceedings by the

petitioner against the respondent no.1 herein, initiated for the offences u/s 138 of the Negotiable Instruments Act. That in the said complaint, the

learned Magistrate passed an order dated 27.6.2011 directing the concerned Police Officer of Gorva Police Station to register the said complaint

as FIR. Consequently, the aforesaid complaint has been registered as M Case No. 3 of 2011 with Gorva Police Station, Vadodara. Being

aggrieved and dissatisfied with the impugned complaint and the order passed by the learned JMFC dated 27/6/2011 passed in Criminal Inquiry

Case No. 95 of 2011 directing the concerned Police Officer of Gorva Police Station to register the said complaint as FIR and consequently

registered M Case No. 3 of 2011, the petitioner-original accused has preferred

present Criminal Miscellaneous Application u/s 482 of the Code of Criminal Procedure.

2. Shri J.M. Malkan, learned advocate for the petitioner has vehemently submitted that as such the impugned private complaint filed by respondent no.1 is a counterblast to the earlier criminal complaint filed by the petitioner against respondent no.1 for the offence punishable u/s 138 of the Negotiable Instruments Act. It is further submitted that the criminal complaint has been filed by petitioner against respondent no.1 for the offences u/s 138 of the Negotiable Instruments Act as far as back in the year 2001 and after evidence of the complainant was recorded and said complaint was at the stage of completion of the evidence on behalf of the complainant, after a period of 10 years the respondent no.1 herein has lodged the impugned complaint with a view to create defence in the proceedings u/s 138 of the Negotiable Instruments Act, which is nothing but an abuse of process of law and Court.

2.1. It is further submitted by Shri Malkan, learned advocate for the petitioner that even the reliefs prayed in the complaint are self explanatory and it shows the intention on behalf of the complainant to file the impugned private complaint. It is further submitted that the order dated 27.6.2011 passed by the learned Magistrate below the private complaint of the respondent no.1 cannot be said to be an order either passed u/s 156(3) of the Code of Criminal Procedure nor it can be said to be an order passed u/s 202 of the Code of Criminal Procedure. It is further submitted that when the dispute regarding cheque is already pending in the earlier criminal proceedings u/s 138 of the Negotiable Instruments Act, subsequent private complaint is barred by Section 340 r/w Section 195 of the Code of Criminal Procedure. By making above submissions, it is requested to allow the present application.

3. Shri Shekhara, learned advocate has appeared with Shri Hiren P Vyas, learned advocate for the respondent no. 1-original complainant. It is submitted that as such the applicant has misused the disputed cheque, for which, private complaint has been filed which is evident from the communication dated 18.6.2011 addressed to the respondent no.1 herein by one Shri Narayan Vadgwani. It is submitted that there are specific averments and allegations in the private complaint which are further required to

be investigated by the concerned Investigating Officer and therefore, it is requested not to exercise the powers u/s 482 of the Code of Criminal Procedure. It is further submitted that as such impugned private complaint is not with respect to the cheques which are dishonoured but the impugned complaint with respect to other similar cheques which are misused by the applicant. Therefore, it is requested to dismiss the present application.

4. Shri Dabhi, learned APP for the respondent State has requested to pass appropriate order considering the facts and circumstances of the case.

5. Heard the learned advocates for the respective parties at length and considered the averments and allegations in the impugned private complaint.

It is required to be noted that as such the applicant has initiated the proceedings against the respondent no.2 herein-original complainant for the

offences u/s 138 of the Negotiable Instruments Act as far as back in the year 2001 and thereafter after the evidence of the complainant was

recorded, as a counter blast, the impugned private complaint has been filed against the petitioner for the alleged offence under Sections 378, 406,

408, 415, 416, 418, 420, 424, 463, 464, 465, 468 and 471 of the Indian Penal Code. It appears that not only the impugned private complaint

has been filed against the applicant as a counterblast to earlier criminal complaint filed by the petitioner against respondent no.1 for the offence u/s

138 of the Negotiable Instruments Act, the same has been filed with a view to create defence in the aforesaid complaint. Even the reliefs which are

prayed in the private complaint are also required to be considered by which the intention on the part of the complaint is born out. The first prayer in

the private complaint is to stay the proceedings of Case/complaints No. 7025 /2001 and 7026 of 2001 till the disposal of this complaint. The

aforesaid shows mala fide intention on the part of the respondent no.1 in filing the impugned private complaint which is nothing but an abuse of

process of law and Court. Under the circumstances, this is a fit case to exercise the powers u/s 482 of the Code of Criminal Procedure to quash

and set aside the impugned criminal proceedings.

5.1. Even the impugned order passed by the learned Magistrate dated 27.6.2011 directing the concerned police officer of Gorva Police Station,

Vadodara to register the complaint as FIR also cannot be sustained. It appears

that the said order cannot be said to be an order either passed u/s 156(3) of the Code of Criminal Procedure nor it can be said to be an order passed u/s 202 of the Code of Criminal Procedure. The learned advocate for the complainant is not in a position to point out under which provision of law the learned Magistrate has passed impugned order. Under the circumstances, impugned order passed by the learned Magistrate and consequently registration of M Case No. 3 of 2011 of Gorva Police Station deserve to be quashed and set aside on the aforesaid ground as well as on merits also. In view of the above and for the reasons stated above, application succeeds and impugned complaint being Criminal Inquiry Case No. 95 of 2011 pending in the Court of learned JMFC, Municipal Court, Vadodara as well M Case No. 3 of 2011 registered with Gorva Police Station, Vadodara (which has been registered pursuant to the order passed by the learned JMFC, Municipal Court, Vadodara dated 27.6.2011 passed below Exh.1 in Inquiry Case No. 95 of 2011) are hereby quashed and set aside. Rule is made absolute to the aforesaid extent.