

(2019) 01 GUJ CK 0115
In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 17832 Of 2015

Dinesh Bhagwanjibhai Bhambaniya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 21-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 120B, 406, 420, 463, 465, 467, 471, 503, 506(2)

Citation : (2019) 01 GUJ CK 0115

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

Bench : Single Bench

Advocate : Bm Mangukiya, Bela A Prajapati, Moxa Thakker

Final Decision : Allowed

Judgement

1.0 The present application has been filed by the applicants under Section 482 of the Code of Criminal Procedure, 1973 ("Code" for short) seeking quashing and setting aside the impugned FIR being C.R.No.I-23 of 2015 registered with Virpur Police Station, Dist:Rajkot for the offences punishable under Sections 406, 420, 465, 467, 471, 506(2) and 120B of the Indian Penal Code, 1860 ("IPC" for short).

2.0 Rule. Ms.Moxa Thakker, learned APP waives service of Rule for the respondent-State.

3.0 The brief facts leading to the filing of the present application are as under:-

3.1 The applicant no.1 is the Director of the Company known and called in the name and style of Sreenathji Coatlink Pvt.Ltd. The said Company is incorporated in the year 2010. The said Company was engaged in the business of purchase of cotton trading. The applicants are also the Directors of the another Company known in the name and style of Sreenathji Cotex Private Limited. The said Company has established its Ginning Process at Jetpur.

3.2 The applicants were doing the business very well. However, in the Year 2012-

13, there was all of a sudden the market has gone down up to 50%. The cotton bill at one point of time has collected more than Rs.60,000/- and within a span of 15 days, the market prices have gone down and crashed to less than Rs.30,000/-. In view of the said fact the whole community, who were trading in the cotton sustained heavy losses. The Company of the applicants also sustained losses. However, the applicants continued to trading in the said commodity with the high hope that the applicants were unable to recover the losses therefrom. But, subsequent years also proved to be equally catastrophic. The market remained heavy volatile. Because of the damage of the weather, the quality of the cotton grown in India was highly affected, and therefore, the cotton exported were rejected in the large quantity. Therefore, the traders sustained heavy losses in the subsequent years also. Several Ginning Factories were closed down. Several Ginning and Traders have become bankrupt. The applicants were also not exception of the same. The applicants have also sustained heavy losses in crores of rupees. Whole capital of the applicants has been washed in the said loss.

4.0 At the outset, Mr.Mangukiya, learned advocate for the applicants has submitted that the FIR being I.C.R.No.15/15 having identical contents registered with Damnagar Police Station for the offences punishable under Sections 406 and 420 of the IPC against the applicant was initially maintained by this Court vide order dated 11.08.2016 passed in Criminal Misc.Application No.18089 of 2015, however, the same was further challenged before the Apex Court in Criminal Appeal No.4/17 (arising out of SLP (Cri.) No.6994 of 2016) and the Apex Court, vide order dated 02.01.2017, quashed and set aside the order of this Court and consequential proceedings arising out the FIR being I.C.R.No.15/15 dated 20.09.2015 was also quashed.

4.1 Learned advocate Mr.Mangukiya has submitted that in present case, the FIR which is impugned in present application, there are same allegations made by the first informant and the only difference is that the offences punishable under Sections 465,467,471, 506(2) read with 120B of the IPC are added. He has further submitted that no offences under Sections 465, 467, 471, 506(2) and 120B of the IPC are established in the impugned FIR. As regards the offences under Sections 406 and 420 of the IPC are concerned, the FIR alleging identical and similar allegations against the applicant has been quashed by the Apex Court vide order dated 02.01.2017.

4.2 In this view of the matter, he has submitted that the impugned FIR may be quashed and set aside.

5.0 Ms.Moxa Thakker, learned APP has submitted that, at this stage, the impugned FIR may not be quashed and set aside and the investigation may be allowed to be proceeded further.

6.0 Heard learned advocates for the respective parties.

6.1 This Court has perused the contents of the impugned FIR dated 20.09.2015 registered with Virpur Police Station as well as the contents of the impugned FIR

dated 20.09.2015 registered with Damnagar Police Station for the offences punishable under Sections 406 and 420 of the IPC. The contents of the FIR are also similar in nature except the amount stated therein. Similar allegations are alleged against the present applicants in the FIR which was impugned in Criminal Misc.Application No.18089 of 2015. In the said application, vide order dated 11.08.2016, this Court has dismissed the petition filed by the present applicant under Section 482 of the Code of Criminal Procedure. The said order was further challenged before the Apex Court by way of filing Criminal Appeal No.4 of 2017 (arising out of SLP (Cri) No.6994 of 2016. In the said case, on 02.01.2017, the Apex Court has passed following order:-

"Leave Granted.We have heard learned counsel for the parties and perused the relevant materials. From the materials on record, particularly, the fact that a sum of Rs.8,69,36,941/- has been paid and even thereafter certain other payments have been effected, we are of the view that the dispute between the parties is in the nature of a civil dispute and the High Court, therefore, ought to have quashed the proceedings. As the High Court has failed to do so, we set aside the order of the High Court and quash and criminal proceedings arising from F.I.R. No. I-15 of 2015, dated 20.09.2015, P.S.Damnagar, District:Amreli. The appeal is accordingly allowed."

6.2 Thus, the Apex Court, in a dispute bearing similar allegations against the applicants, has quashed and set aside the FIR by observing that the dispute between the parties is in nature of civil dispute. The Apex Court has set aside the order of the High Court and quashed criminal proceedings. Thus, in present case, wherein the allegations made against the present applicants are identical in nature except the variation of the amount as stated therein and the amount incorporated in the cheques. Nothing is revealed except that in the FIR impugned in present application, the offences punishable under Sections 465, 467, 471 and 506(2) of the IPC are registered against the present applicants. The allegations as regards Section 465, 467 and 471 of the IPC are concerned, a bare reading of the FIR would reveal that the ingredients of the impugned FIR does not reveal the offences punishable under the aforesaid sections.

6.3 The aforesaid sections dealing with offence of forgery which is defined in Section 463 of the IPC. The same reads as under:-

"463.Forgery: - Whoever makes any false documents or Electronic Record¹ part of a document or Electronic Record¹ with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

6.4 As regards the offence punishable under Section 506 (2) of the IPC is concerned, the same reads as under:-

"506 Punishment for criminal intimidation: --Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description

for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.: --and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

6.5 As regards the offence under section 506(2) of the IPC, the same deals with punishment for criminal intimidation. Criminal intimidation, insult and annoyance are defined in section 503 of IPC. The intention of the accused must be to cause alarm to the victim (complainant) by such criminal intimidation. The law is well settled on the issue. Mere expression of words, without any intention to cause alarm, would not encompass the ingredients of section 506 IPC. In the present case, the complainant has not asked for any police protection, if he had fear of his life. The offence of criminal intimidation can be made out, if it is established that the accused had an intention to cause alarm to the complainant. Mere threat given by the accused not with an intent to cause any alarm to the complainant would not constitute offence of criminal intimidation.

7.0 Thus, in light of the order passed by the Apex Court in Criminal Appeal No.4 of 2017 (arising out of SLP (Cri.) No.6994 of 2016) dated 02.01.2017, quashing and setting aside the FIR of even date having identical allegations made in present case except that of giving threat to the present complainant, the impugned FIR being C.R.No.I-23 of 2015 registered with Virpur Police Station, Dist:Rajkot as well as other consequential proceedings arising out of the same FIR are hereby quashed and set aside. Rule is made absolute. Direct service is permitted.